THE

AMERICAN JOURNAL

OF

INTERNATIONAL LAW

VOLUME 13

1919

PUBLISHED FOR

THE AMERICAN SOCIETY OF INTERNATIONAL LAW

BY

OXFORD UNIVERSITY PRESS: 35 WEST 32D STREET, NEW YORK, U.S.A.

Agent for Great Britain: Oxford University Press, Amen Corner, London

Agent for Toronto, Melbourne and Bombay: Oxford University Press

CONTENTS OF VOLUME THIRTEEN

[No. 1, January, 1919, pp. 1-157; No. 2, April, 1919, pp. 159-387; No. 3, July, 1919, pp. 389-630; No. 4, October, 1919, pp. 631-860.]

CONTENTS

THE AMERICAN JOURNAL OF INTERNATIONAL LAW is supplied to all members of the American Society of International Law without extra charge, as the membership fee of five dollars per annum includes the right to all issues of the JOURNAL published during the year for which the dues are paid. (Members residing in foreign countries pay one dollar extra per annum to cover foreign postage.)

The annual subscription to non-members of the Society is five dollars per annum (one dollar extra is charged for foreign postage), and should be placed with the publishers, the Oxford University Press, American Branch, 35 West 32nd Street, New York City.

Single copies of the JOURNAL will be supplied by the publishers at $1.25 per copy.

Applications for membership in the Society, correspondence with reference to the JOURNAL and books for review should be sent to James Brown Scott, Editor-in-Chief, 2 Jackson Place, Washington, D. C.

THE LACK OF UNIFORMITY IN THE LAW AND PRACTICE OF STATES WITH REGARD TO MERCHANT VESSELS

THERE is at present considerable discussion regarding questions with respect to "the freedom of the seas." These questions, so often vaguely referred to, should presumably be understood to relate to the exercise of belligerent rights on the sea and to embrace such matters as a possible codification of international law touching this subject, proper compliance with rules heretofore generally accepted if not always strictly observed, the desirability of amendments to such rules, and the formulation of principles to meet new problems that have grown out of the recent conflict. In the light of events in connection with the war the present situation with regard to the disposition of such questions through international agreement unhappily appears more difficult than that which confronted the delegates who assembled in conference at London in 1908 on the invitation of the British Government to reach an understanding among the nations represented relative to the rules of international law concerning the laws of naval warfare, and formulated the so-called London Declaration signed February 26, 1909.

On the other hand, when normal commercial relations are restored with the advent of peace, attention will probably be drawn more strongly than heretofore to certain conditions which are obviously detrimental to the promotion of safety of travel at sea and detrimental generally to the harmonious international relations necessary to the development of commerce, such conditions being consequent upon an unfortunate lack of uniformity among states with regard to certain branches of maritime law governing the responsibility of shipowners, laws pertaining to safety of navigation, and laws relating to the general question of jurisdiction over merchant vessels in foreign ports.

It is the purpose of this article briefly to call attention to certain matters touching this subject of the want of harmony in the municipal laws of maritime nations, namely: (1) efforts made in recent years

W.H.C.

largely on the initiative of the British Government looking to the remedy of existing difficulties through international agreements; (2) the law and practice of the United States bearing on some phases of the general subject under consideration; and (3) certain important questions lately raised in American and British courts as to jurisdiction over vessels operated under governmental control.

I

On the invitation of the Government of Belgium an international conference on maritime law was held at Brussels in 1905, for the purpose of promoting uniformity in relation to certain questions of maritime law. Representatives of Belgium, The Kongo, Spain, France, Italy, Japan, Norway, The Netherlands, Roumania, Russia, Sweden, and the United States signed a protocol providing for the submission to their respective governments of *projets* of conventions on collision and salvage respectively. An adjourned meeting of this conference met on October 16 of the same year at Brussels, and the delegates present signed a protocol not materially different from that drafted at the previous meeting. This latter protocol likewise provided for the submission to the governments represented of two drafts of conventions relating to collision and salvage. These proposed conventions had their origin in drafts of conventions approved by the International Maritime Committee at a conference held in Hamburg in 1902. A third session of the conference met at Brussels September 28, 1909. It was attended by delegates from the United States, Germany, Argentine Republic, Austria-Hungary, Belgium, Brazil, Chile, Cuba, Denmark, Spain, France, Great Britain, Greece, Italy, Japan, Mexico, Nicaragua, Norway, Netherlands, Portugal, Roumania, Russia and Sweden. The conference adjourned on October 8 and reconvened September 12, 1910. Two conventions relating to collisions and salvage were approved by the conference and referred to the several governments. The conference also considered drafts of two conventions relating respectively to the limitation of shipowners' liability and maritime liens, but no final action was taken with regard to such proposed conventions. The convention with regard to salvage has been ratified by

the Government of the United States.[1] The convention with regard to collisions has not been ratified by this Government and has not come before the Senate for consideration.

At a conference held at London on the invitation of the Government of Great Britain in 1914 representatives of Germany, Austria-Hungary, Belgium, Denmark, Spain, United States, France, Great Britain, Italy, Norway, Netherlands, Russia and Sweden signed the International Convention on the Safety of Life at Sea. This agreement contains comprehensive provisions relating to precautions against dangers to navigation, the construction of vessels, and appliances for life saving and fire protection. The outbreak of the war rendered nugatory, for the time being at least, the work of this conference.

Ratifications of but few countries, among which the United States is not included, have been deposited with the British Government.

The Senate of the United States, in a Resolution dated December 16, 1914, gave consent to ratification of the convention with a proviso in which it is declared in part that "the United States reserves the right to . . . impose upon all vessels in the waters of the United States such higher standards of safety and such provisions for the health, protection and comfort of passengers, seamen and immigrants as the United States shall exact for vessels of the United States." If other governments should take the view that the so-called reservation contained in the resolution of the Senate is equivalent to an amendment of the treaty or a reservation of a right of the Government of the United States to disregard the provisions of the treaty at will, it would seem that such nations might object to the acceptance of such a ratification. And this Government would appear to be in a position to deposit its ratification only if it may properly be considered that the reservation made by the Senate in connection with its consent to the ratification of the convention is in effect a surplusage which does not affect the treaty directly and at most only violates the treaty in spirit,

[1] International Convention for the Unification of Certain Rules of Law with Respect to Assistance and Salvage at Sea, ratification of which was deposited with the Belgian Government January 25, 1913. See Act to carry this treaty into effect (37 Stat. L. 242).

or if the convention should be sent back to the Senate and an unconditional consent should be given by that body to ratification of the convention.

In the interest of safety of life at sea the several signatory powers prescribed in the treaty, through their plenipotentiaries in conference, certain standards with respect to the equipment and operation of vessels. The Government of the United States having agreed to these standards, it seems odd for this Government to make a declaration to the effect that it will adhere to them but that it reserves the right to change them and to impose on all vessels in its waters, foreign as well as American vessels, such higher standards of safety as it may deem appropriate.

However, it can perhaps be plausibly argued that, whatever action might be taken in the future in accordance with the possible purposes indicated in the Senate's reservation with respect to the Convention for the Safety of Life at Sea, such action would not necessarily be violative of the treaty, though it might be objectionable to foreign nations whose vessels it would affect.

A fair construction of the treaty seems to be that it imposes upon each of the contracting nations obligations to exact of its own vessels the requirements of the convention with respect to their equipment and operation, but not obligations to see to it that these requirements are met by the vessels of other contracting nations.

It would, therefore, seem that, although foreign nations might question the right of this Government to substitute in its judgment standards as to the equipment of American vessels in place of those specified by the treaty, if it should impose on its own vessels not only the standards required by the treaty but also certain higher standards, other nations would not be in a position to complain of a violation of the treaty on the part of this Government.

Should this Government attempt to impose on vessels of other nations standards other than those prescribed by the treaty, such action would doubtless be regarded by those nations as objectionable, but a complaint of treaty violation could probably be met with the reply that the only obligations which the treaty imposes on this Government are those requiring it to see to it that its vessels are operated

and equipped in accordance with the rules prescribed by the treaty, and that if this Government sees fit to prescribe certain rules for vessels of other countries, its action in such a matter is one with which the treaty is not concerned, so long as the regulations imposed on the foreign vessels are not such as to require these vessels to disregard the standards prescribed by the convention.

Unfortunately it seems possible that the work of the conference which framed this convention may become a nullity in consequence of the intervention of the war. But it may be that an understanding can be reached to prevent such a result.

II

It appears that the Government of Great Britain had under consideration shortly prior to the outbreak of the war the question of the advisability of endeavoring to effect an arrangement with other nations with regard to the question of jurisdiction over merchant vessels in foreign ports. Possibly this interesting subject may be taken up when the condition of international affairs will permit such action.

The Supreme Court of the United States and the lower federal courts have in numerous cases set forth the rules defining the law and practice of the United States relative to the exercise of criminal and civil jurisdiction by this government over foreign merchant vessels and persons on board of them in territorial waters of this country, and over American vessels and persons thereon in foreign waters. Reference to a few cases will serve to call attention to the general principles enunciated.

With regard to the exercise of jurisdiction in criminal matters by the courts of this country over foreign ships in American waters and over persons on board such vessels, the leading case may doubtless be considered to be that known as Wildenhus's Case,[2] in which the Supreme Court of the United States sustained the jurisdiction of the courts of New Jersey where the crime of felonious homicide had been committed by a Belgian subject on the person of another Belgian subject on board of a Belgian vessel lying in the port of Jersey City,

[2] 120 U. S. 1.

New Jersey. In the following excerpt from the opinion of the court delivered by Mr. Chief Justice Waite are enunciated the rules underlying the assumption or non-assumption of jurisdiction by the local courts:

It is part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purpose of trade, it subjects itself to the laws of the place to which it goes, unless by treaty or otherwise the two countries have come to some different understanding or agreement; for, as was said by Chief Justice Marshall in *The Exchange,* 7 Cranch, 116, 144, "it would be obviously inconvenient and dangerous to society, and would subject the laws to continual infraction, and the government to degradation, if such . . . merchants did not owe temporary and local allegiance, and were not amenable to the jurisdiction of the country." *United States* v. *Diekelman,* 92 U. S. 520; 1 Phillimore's Int. Law, 3d ed. 483, Sec. 351; Twiss' Law of Nations in Time of Peace, 229, Sec. 159; Creasy's Int. Law, 167, Sec. 176; Halleck's Int. Law, 1st ed. 171. And the English judges have uniformly recognized the rights of the courts of the country of which the port is part to punish crimes committed by one foreigner on another in a foreign merchant ship. *Regina* v. *Cunningham,* Bell C. C. 72; S. C., 8 Cox C. C. 104; *Regina* v. *Anderson,* 11 Cox C. C. 198, 204; S. C., L. R. 1 C. C. 161, 165; *Regina* v. *Heyn,* 13 Cox C. C. 403, 486, 525; S. C., 2 Ex. Div. 63, 161, 213. As the owner has voluntarily taken his vessel for his own private purposes to a place within the dominion of a government other than his own, and from which he seeks protection during his stay, he owes that government such allegiance for the time being as is due for the protection to which he becomes entitled.

From experience, however, it was found long ago that it would be beneficial to commerce if the local government would abstain from interfering with the internal discipline of the ship, and the general regulation of the rights and duties of the officers and crew towards the vessel or among themselves. And so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done on board which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged, as the laws of that nation or the interests of its commerce should require. But if crimes are committed on board of a character to disturb the peace and tranquillity of the country to which the vessel has been brought, the offenders have never by comity or usage been entitled to any exemption from the operation of the local laws for their punishment, if the local tribunals see fit to assert their authority.

The rules with regard to the exercise of civil jurisdiction in cases involving the rights of foreign vessels or persons connected with such vessels have frequently been announced by the courts in a variety of cases.

In *ex parte* Newman[3] a case in which foreign seamen had libeled a foreign vessel for wages, the Supreme Court of the United States said that admiralty courts will not take jurisdiction in such a case, except where it is manifestly necessary to do so to prevent failure of justice; that the better opinion is that independent of treaty stipulations there is no constitutional or legal impediment to the exercise of jurisdiction in such a case, but that the courts will not do so as a general rule without the consent of the representative of the country to which the vessel belongs, where it is practicable that the representative should be consulted.

In the case of the *Carolina,*[4] a British vessel, in which an action was brought by a foreign seaman in the United States Court for the District of Louisiana to recover damages for assault and battery alleged to have been committed on the high seas, the court said:

> It is undoubtedly true, as a general proposition, that an action for a personal tort follows the person, and may be brought in any foreign court. It is also true that the courts of a nation are established and maintained for the convenience of its own citizens or subjects, and if foreigners are permitted to become actors therein it is because of what is termed comity between nations. American Law Review, vol. 7, p. 417, and Daniel Webster's Works (Everett's Edition), vol. 6, pp. 117, 118. The only ground upon which a foreigner could urge a claim to become a libelant in our courts would be that it was by comity due his government that its subjects should be thus heard, and, so far as this claim could be considered as a right, it could be insisted on only by that government, and, except in cases of inhumanity or gross injustice, would disappear whenever the claimant's government took a position against it.

The court stated that the exercise of jurisdiction in this case was discretionary, and that the courts of Great Britain afforded adequate redress to the libelant. The court therefore declined to take jurisdiction.

In *Patterson* v. *Barke Eudora,*[5] the Supreme Court of the United

[3] 14 Wall. 152. [4] 14 Fed. Rep. 424. [5] 190 U. S. 169.

States held that a British vessel and its master were within the provisions of the Act of December 31, 1898, prohibiting the payment to seamen of advanced wages. The Court, after referring to previous decisions in relation to the question of jurisdiction over foreign vessels, said:

> The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which those vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels.

The general principles laid down in the cases to which attention has been called are concisely summarized with citations in the following extract from the opinion of the court in the case of *Ester*,[6] in which suit was brought against a Swedish steamship by a seaman to recover unpaid wages and damages for personal injury:

> (1) The merchant vessels of one country visiting the ports of another for the purposes of trade subject themselves to the laws which govern the port they visit, so long as they remain. United States *v.* Diekelman, 92 U. S. 520, 23 L. Ed. 742; Wildenhus' Case, 120 U. S. 11, 7 Sup. Ct. 385, 30 L. Ed. 565.
>
> (2) In the absence of treaty stipulations, the courts of admiralty have civil jurisdiction in all matters appertaining to the foreign ship while in port, and also in certain cases when the court has the vessel in its territorial jurisdiction, although the cause of action arose on the high seas, The Belgenland, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; Wildenhus' Case, 120 U. S. 1, 7 Sup. Ct. 385, 30 L. Ed. 565.
>
> (3) The exercise of this civil jurisdiction, where those who are concerned are all citizens of the same foreign state and the cause of action occurred on or with regard to the ship, is not imperative, but discretionary, and the courts from motives of convenience or international comity will not take jurisdiction without the assent of the consul of the country to which the ship belongs, where the controversy involves matters arising beyond the territorial jurisdiction of this country, or relates to differences between the master and the crew, or

[6] 190 Fed. Rep. 218.

the crew and the shipowners. In such cases on such general principles of comity, the admiralty courts of this country will not interfere between the parties, unless there is special reason for doing so, and will require the foreign consul to be notified, and although not absolutely bound by, will always pay respect to, his wishes as to taking jurisdiction. Ex parte Newman, 14 Wall. 152, 20 L. Ed. 877; The Belgenland, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; Patterson *v.* Eudora, 190 U. S. 169, 23 Sup. Ct. 821, 47 L. Ed. 1002.

(4) Where, however, special circumstances exist, such as where the voyage is ended, or the seamen have been dismissed or treated with great cruelty, the courts, in the absence of treaty stipulations, will entertain jurisdiction. The Belgenland, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152.

(5) Where treaty stipulations exist, however, with regard to the right of the consul of a foreign country to adjudge controversies arising between the master and the crew, or other matters occurring on the ship exclusively subject to the foreign law, such stipulations are the law of the land, and must be fairly and faithfully observed. The Belgenland, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152; Widenhus' Case, 120 U. S. 17, 7 Sup. Ct. 385, 30 L. Ed. 565.

(6) Congress has power by legislation to regulate matters affecting foreign seamen and foreign vessels and foreigners generally when within the ports of this country by making their entrance subject to such conditions as Congress may seek to impose or withdrawing its consent to permit them to enter wholly, if it see fit. Patterson *v.* Eudora, 190 U. S. 169, 23 Sup. Ct. 821, 47 L. Ed. 1002.

With reference to the question of the jurisdiction over American merchant vessels in foreign territorial waters, it may be said that the Government of the United States in the past has asserted in behalf of its vessels the rights which, as indicated by the judicial decisions just mentioned, are accorded to foreign vessels in waters of the United States. This Government, while conceding on the one hand that when one of its vessels visits the port of another country for the purposes of trade it is amenable to the jurisdiction of that country and is subject to the laws which govern the port it visits so long as it remains, unless it is otherwise provided by treaty, has on the other hand, on a number of occasions, made clear its view that by comity matters of discipline and all things done on board which affect only the vessel or those belonging to her and do not involve the peace or dignity of the country or the tranquillity of the port, should be left by the local government to be dealt with by the authorities of the nation to which

the vessel belongs, as the laws of that nation or the interests of its commerce may require.[7]

Private vessels belonging to this country are deemed parts of its territory. They are accordingly regarded as subject to the jurisdiction of this country, on the high seas, and in foreign ports, even though they admittedly are also temporarily subject generally to the laws of such ports.

In *United States* v. *Rodgers*,[8] a case in which the Supreme Court sustained the jurisdiction of courts of the United States to try a person for an assault committed on a vessel belonging to a citizen of the United States while such vessel was in the Detroit River and within the limits of the Dominion of Canada, Mr. Justice Field, who delivered the opinion of the court, said:

> It is true, . . . that, as a general principle, the criminal laws of a nation do not operate beyond its territorial limits, and that to give any government, or its judicial tribunals, the right to punish any act or transaction as a crime, it must have occurred within those limits. We accept this doctrine as a general rule, but there are exceptions to it as fully recognized as the doctrine itself. One of those exceptions is that offences committed upon vessels belonging to citizens of the United States, within their admiralty jurisdiction, (that is, within navigable waters,) though out of the territorial limits of the United States, may be judicially considered when the vessel and parties are brought within their territorial jurisdiction. As we have before stated, a vessel is deemed part of the territory of the country to which she belongs.

On March 4, 1915, the President approved an Act of Congress usually referred to as the "Seamen's Act."[9] The general purposes of this law evidently were the improvement of the condition of seamen and the promotion of safety of life at sea.

Whatever may be the merits of this act it can undoubtedly be said to have aroused a good deal of criticism in foreign countries. The questions that have arisen in connection with its enforcement with regard to foreign vessels, to which it is applicable the same as to American vessels, may be said to fall into two classes, namely: (1) those

[7] See Moore, Digest, II, pp. 272-362.
[8] 150 U. S. 249.
[9] 38 Stat. L. 1164.

involving treaty rights affected by certain provisions of the act, and (2) those which, while not involving legal rights, relate to international comity and established customs of nations.

Provisions of the first-mentioned class are found in Sections 4 and 16 of the Act. Section 4, which provided among other things for the enforcement of certain specified rights of foreign seamen respecting their wages, and further provided that the courts of the United States should be open to such seamen for its enforcement, was inconsistent with treaty stipulations withdrawing from the jurisdiction of local authorities wages disputes between masters and members of the crews of merchant vessels. Section 16 directed the President to give notice within ninety days of the passage of the act to foreign governments of the termination of treaty stipulations providing for the arrest and imprisonment of deserting seamen from vessels of the United States abroad or from foreign vessels in American ports. Stipulations in a score of treaties were affected by the law.[10]

The act was framed so that at the end of a certain period the stipulations inconsistent therewith could no longer be enforced in this country and should of course not be invoked by American Consular Officers abroad. And since practically all of these agreements did not contain provisions for partial abrogation a somewhat difficult task in adjusting conflicts between the law and the treaty provisions in question confronted the executive department of the Government except in two instances in which the treaties contained no provisions other than those affected by the law.

Statutory provisions of the second class just mentioned are found

[10] Austria-Hungary, May 8, 1848, Art. IV, and July 11, 1870, Arts. XI and XII; Belgium, March 9, 1880, Arts. XI and XII; Bolivia, May 13, 1858, Art. XXXIV; China, June 15, 1858, Art. XVIII; Colombia, December 12, 1846, Art. XXXIII, and May 4, 1850, Art. III; Denmark, July 11, 1861, Arts. I and II; Great Britain, June 3, 1892; France, June 24, 1822, Art. VI, and February 23, 1853, Arts. VIII and IX; Greece, November 19, 1902, Arts. XII and XIII; Italy, May 8, 1878, Art. XIII, and February 24, 1881; Independent State of the Kongo, January 25, 1891, Art. V; Netherlands, January 19, 1839, Art. III, and May 23, 1878, Art. XII; Norway, July 4, 1827, Arts. XIII and XIV; Roumania, June 17, 1881, Arts. XI and XII; Spain, July 3, 1902, Arts. XXIII and XXIV; Sweden, June 1, 1910, Arts. XI and XII, and July 4, 1827, Arts. XIII and XIV; and Tonga, October 2, 1886, Art. X.

in Sections 4, 11, 13 and 14 of the act. Section 4 provides that seamen shall be entitled to receive on demand from the master of the vessel one-half of the wages which they have earned at every port where the vessel shall load or deliver cargo. Section 11 makes unlawful the payment of advance wages of seamen. Section 13 provides that no vessel (with certain exceptions) shall be permitted to depart from a port of the United States unless it has on board a crew not less than 75 per centum of which in each department are able to understand any order given by the officers of the vessels, nor unless a certain percentage of the crew "are of a rating not less than able seamen." Section 14 of the law contains provisions relating to "life saving appliances, their equipment and the maintaining of the same."

Briefly summarized, the important international aspects of the Act of March 4, 1915, which have been pointed out, grow out of provisions thereof that affect treaty arrangements of long standing, that apparently in a measure set aside the general rule of comity under which American courts have refused to take jurisdiction in certain controversies between masters and seamen, and that run counter to laws and customs of other countries and have the effect of nullifying contracts made outside of the jurisdiction of the United States, and of compelling foreign nations to conform to the ideas of this country in matters relating to the equipment of vessels and the treatment and qualifications of seamen, some phases of which are dealt with by the London Convention for the Safety of Life at Sea.

III

Some interesting questions have been raised in the courts of this country and in British courts during the war with regard to jurisdiction over vessels which have been diverted from their customary employment because of conditions brought about by the war, namely, vessels requisitioned by the governments to which they belonged and government owned vessels employed in commerce.[11]

[11] See *The Luigi*, 230 Fed. Rep. 495; *The Attualita*, 238 Fed. Rep. 909; *The Pampa*, 245 Fed. Rep. 137; *The Florence H.*, 248 Fed. Rep. 1014; *The Roseric* (D. C. N. J.) decided in November, 1918; *The Broadmayne* (1916), L. T. Rep. 891; *The Messicano*, 32 L. T. Rep. 519.

In the case of *The Attualita,*[12] an Italian merchant vessel requisitioned by the Italian Government, the Circuit Court of Appeals for the Fourth Circuit held that the vessel was not exempt from suit in a court of this country. This ship, which it appears was employed in the Italian Government service at a fixed rate and remained under the control and management of the owner who paid the officers and crew, had been libeled by a Greek steamer to recover damages for loss resulting from a collision between the two vessels which occurred in the Mediterranean Sea. The contention was pressed in this case that *The Attualita* being under requisition of the Italian Government was immune from the jurisdiction of the courts of this country under principles of international law.

The decision of the court appears clearly to be grounded on sound principles.

It is of course well settled that aliens have free access to the courts of this country to maintain and defend their rights in cases of this character.[13]

In the opinion of the court reference was made to the well known case of *The Exchange,*[14] in which the Supreme Court of the United States held that the public armed vessels of a foreign nation may, upon principles of comity, enter the harbors of this country with the presumed license of the government, and while there are exempt from the jurisdiction of local courts.

Chief Justice Marshall in rendering the opinion of the court said that the "perfect equality and absolute independence of sovereigns, and common interest impelling them to mutual intercourse, and an interchange of good offices with each other, have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation." It appears that he divided these cases into the following classes: (1) the immunities accorded the person of the sovereign in a foreign country; (2)

[12] 238 Fed. Rep. 909.

[13] *The Maggie Hammond,* 9 Wall. 435; *The Belgenland,* 114 U. S. 368; *The Kaiser Wilhelm der Grosse,* 175 Fed. Rep. 215.

[14] 7 Cranch, 116.

the immunities granted by civilized nations to foreign diplomatic representatives; (3) the immunities allowed the troops of a foreign prince which are permitted to pass through his dominions; and (4) the immunities granted to public armed vessels.

In the light of this often quoted rule there appears to be no violation of international law or comity in the action of an admiralty court in taking jurisdiction in proceedings *in rem* or *in personam* instituted with a view to recovering indemnity for loss resulting from the alleged improper navigation of a merchant vessel the services of which the owner thereof has been temporarily required by his government to place at its disposal in consideration of a stipulated compensation for such services.

Any contention that a court in the United States should not adjudicate a controversy of this kind because a sovereign should not be impleaded as a private litigant to defend his rights before judicial tribunals of a foreign government, appears clearly not to be well grounded. The action of a court in taking jurisdiction in the case must not necessarily result in impleading the government to which the vessel belongs, since the courts are open to the owner of the vessel to defend his rights in proceedings instituted against it.

The following excerpt from the opinion of the court in *Workman* v. *The Mayor*,[15] in which Mr. Justice White discussed at some length the question of the right to recover for maritime torts committed by government owned vessels, seems pertinent to this point:

> We, of course, conceive that where maritime torts have been committed by the vessels of a sovereign, and complaint has been made in a court of admiralty, that court has declined to exercise jurisdiction, but this was solely the cause of the immunity of sovereignty from suit in its own courts. So, also, where, in a court of admiralty of one sovereign, redress is sought for a tort committed by a vessel of war of another nation, it has been held that as by the rule of international comity the sovereign of another country was not subject to be impleaded, no redress could be given. Both of these rules, however, proceed upon the hypothesis of the want of a person or property before the court over whom jurisdiction can be exerted. As a consequence, the doctrine above stated rests not upon the supposed want of power in courts of admiralty to redress a wrong committed by one

[15] 179 U. S. 552.

over whom such courts have adequate jurisdiction, but alone on their inability to give redress in a case where jurisdiction over the person or property cannot be exerted. In other words, the distinction between the two classes of cases is that which exists between the refusal of a court to grant relief because it has no jurisdiction to do so, and the failure of a court to afford redress in a case where the wrong is admitted and jurisdictional authority over the wrongdoer is undoubted.

The principle enunciated by Mr. Justice White apparently underlies the decision of the court in the case of *Johnson Lighterage Co. No. 24*,[16] in which it was held that a suit *in rem* could be maintained against the property of a foreign government to recover for salvage services rendered in saving the property while in the possession of a Lighterage Company which had contracted to transport it from a railroad terminal to a vessel. Judge Haight, in the opinion rendered by him in this case, said:

It is undoubtedly the general rule that the courts of this country are without jurisdiction to entertain, except by consent, either an action in personam against our own government or that of a friendly foreign nation or sovereign, or an action against its property in its possession and devoted or destined to be devoted to the public use. The Siren, 7 Wall. 152, 154, 19 L. Ed. 189; Stanley *v.* Schwalby, 147 U. S. 508, 512, 13 Sup. Ct. 418, 37 L. Ed. 258; The Exchange, 7 Cranch, 116, 3 L. Ed. 287; Tucker *v.* Alexandroff, 183 U. S. 424, 440, 463, 22 Sup. Ct. 195, 46 L. Ed. 264; Hassard *v.* United States of Mexico, 46 App. Div. 623, 61 N. Y. Supp. 939; Briggs *v.* Light Boats, 11 Allen (Mass.) 157. But there is what may be termed an exception to this rule, although it is probably not strictly such, which was enunciated and applied by the Supreme Court, so far as our own government is concerned, in The Davis, 10 Wall. 15, 19 L. Ed. 875, and followed and applied as to a foreign government by Judge Brown, in the Southern District of New York, in Long *v.* The Tampico (D.C.) 16 Fed. 491. This so-called exception, I think, must control the questions to be decided in the case at bar. In the former of these cases it was held that personal property of the United States on board a private vessel for transportation from one point to another was liable to a lien for services rendered in saving it, and although such lien could not be enforced by a suit against the United States, or by a proceeding in rem, when the possession of the property could only be had by taking it out of the actual possession of an officer of the government, yet it could be enforced by a proceeding in rem where the process

[16] (1916) 231 Fed. Rep. 365.

of the court could be enforced without disturbing the possession of the government.

In *The Attualita* case the court very pertinently commented as follows on the serious consequence of a decision which would grant to a privately owned merchant vessel in the service of the government whose flag it flies the immunities accorded to foreign war vessels:

> There are many reasons which suggest the inexpediency and the impolicy of creating a class of vessels for which no one is responsible in any way. For actions of the public armed ships of a sovereign, and for those whether armed or not, which are in the actual possession, custody and control of the nation itself, and are operated by it, the nation would be morally responsible although without her consent not answerable legally in her own or other courts. For the torts and contracts of an ordinary vessel it and its owners are liable. But the ship in this case, and there are now apparently thousands like it, is operated by its owners, and for its action no government is responsible at law or in morals.
>
> The persons in charge of the navigation of the ship remain the servants of the owners and are paid by the owners. The immunity granted to diplomatic representatives of a sovereignty, to its vessels of war, and under some circumstances to its other property in its possession and control, can be safely afforded because the limited numbers and the ordinarily responsible character of the diplomats or agents in charge of the property in question and the dignity and honor of the sovereignty in whose services they are, make abuse of such immunity rare. There will be no such guaranty for the conduct of the thousands of persons privately employed upon ships which at the time happen by contract or requisition to be under charter to sovereign governments.

In line with the thought expressed in the above quoted excerpt it may be observed that, if merchant vessels under requisition of the government of the country to which they belong should be regarded as entitled in the ports of another country to the immunities accorded to public armed vessels the local tribunals of such other country would seemingly be impotent to determine even the rights of its own nationals in cases involving torts, salvage and contracts of various kinds, and controversies between seamen and masters of vessels. And the local courts might be precluded from the administration of criminal jurisprudence in cases wherein the arrest of any persons con-

nected with the vessel for an offense committed within the territorial jurisdiction of the country wherein the courts are located might occasion delay in the departure of the vessel from the port.

With regard to the question of the lack of remedies open to persons who may be precluded from asserting rights against a vessel under requisition in the courts, it seems clear that it is not a sufficient answer that redress may be sought directly from the government to which the vessel belongs. If, as seems possible might be the case, no such redress is available—and at best it would be inconvenient and uncertain—such persons evidently have no remedy except by application to their government for assistance through diplomatic channels, a remedy likewise uncertain as well as long drawn out.

There are other serious questions pertinent to be considered in relation to the status of requisitioned vessels. If the view should be taken that such vessels should be given a treatment assimilated to that accorded to vessels of war and should not be subjected to laws and regulations governing merchant vessels in foreign ports, a grave question might be raised as to the propriety of neutral governments permitting such vessels freely to enter and leave their ports and to transport therefrom merchandise of all kinds, including articles of contraband in times of war.

In the case of *The Belgenland,*[17] the Supreme Court of the United States pointed out that there are certain circumstances in which courts in this country will exercise their discretion to take or to refuse jurisdiction over foreign vessels, their officers, and crews in ports of the United States.

In the case of *The Attualita* it was argued that in the exercise of a sound discretion jurisdiction should be declined. Such a contention, the court held, was foreclosed by what the court said in the case of *The Belgenland.* It may be observed with regard to this point that, apart from what the court said in this last mentioned case, the grounds upon which it appears proper to sustain the jurisdiction of courts in cases involving requisitioned vessels seem pertinent to the question as to whether the courts should in the exercise of their discretion decline to take jurisdiction.

[17] 114 U. S. 365.

The reasons why courts should not decline to take jurisdiction in the case of vessels of the character in question could seemingly be advanced at least to some degree against the action which it appears was taken by Judge Chatfield of the District Court of the Eastern District of New York, in deciding that, without prejudice to the court's jurisdiction, the steamship *Glenedin*, a private merchant vessel, under requisition to the British Government, might be released to that Government for the purpose of being used as a public vessel on the giving of a bond to secure the claim or to return the vessel except as the needs of the British Government might keep it elsewhere while under requisition or charter by the British admiralty.[18]

In the case of the *Maipo*,[19] the District Court for the Southern District of New York held that a naval transport owned by a foreign government and in its possession through a naval captain and crew, although chartered to a private individual to carry a commercial cargo, was not subject to seizure under process of an admiralty court of the United States in a suit by shipper for damage to the cargo. The contention appears to have been raised by the libelant in this case that the ship was subject to process because of its use for commercial purposes. A case of this character appears to raise a question of jurisdiction somewhat more vexatious than that involved in the case of a requisitioned vessel engaged in trade.

In the case of *The Charkieh*,[20] Sir Robert Phillimore held that a vessel owned by the Khedive of Egypt, though flying the flag of the Turkish Navy, was not free from process *in rem*, when she had come with a cargo to England and had been entered at the customs like an ordinary merchant vessel. While the case apparently was decided on the ground that the Khedive was not an independent sovereign, the court said:

> I must say that if ever there was a case in which the alleged sovereign (to use the language of Bynkershoek) was "strenue mercatorem agens," or in which, as Lord Stowell says, he ought to "traffick on the common principles that other traders traffick" it is the present

[18] Decided November 27, 1918.
[19] (July 8, 1918) 252 Fed. Rep. 627.
[20] Law Rep. 4 A. & E. 59.

case; and, if ever a privileged person can waive his privilege by his conduct, the privilege has been waived in this case.

It was not denied, and could not be denied, after the evidence that the vessel was employed for the ordinary purposes of trading. She belongs to what may be called a commercial fleet. I do not stop to consider the point of her carrying the mails, for that was practically abandoned by counsel. She enters an English port and is treated in every material respect by the authorities as an ordinary merchantman, with the full consent of her master; and at the time of the collision she is chartered to a British subject, and advertised as an ordinary commercial vessel. No principle of international law, and no decided case, and no dictum of jurists of which I am aware has gone so far as to authorize a sovereign prince to assume the character of a trader, when it is for his benefit; and when he incurs an obligation to a private subject to throw off, if I may so speak, his disguise, and appear as a sovereign, claiming for his own benefit, and to the injury of a private person, for the first time, all the attributes of his character; while it would be easy to accumulate authorities for the contrary position. (See, especially, Kluber Europe. Volkerrecht, Sec. 210, and authorities cited in note.)

Judge Mayer in his decision in the case of *The Maipo* referred to the case of *The Charkieh* as the "sole authority for the libelant's view" of the status of *The Maipo* and said that the former had been overruled by *The Parlement Belge*.[21] In that case the court held that an unarmed packet belonging to the King of Belgium and in the hands of officers commissioned by him and employed in carrying mails was not liable to be seized in a suit *in rem* to recover redress for a collision, and that the fact that the vessel had been engaged in trade did not take away the immunity attaching to it as a public vessel, the property of an independent sovereign.

Judge Mayer's opinion in the case of *The Maipo* is evidently in harmony with the decision in the *Parlement Belge*, and with the general trend of American and British cases involving questions with regard to the immunity of government owned property.[22] However, it is submitted that there is a sound doctrine in the observations made by Sir Robert Phillimore in the case of *The Charkieh* with regard to

[21] (1878) L. R. 5 P. D. 197.

[22] *The Siren*, 7 Wall. 152; *The Davis*, 10 Wall. 15; *Stanley* v. *Schwalby*, 147 U. S. 508; *Hassard* v. *Mexico*, 61 N. Y. Supp. 939; *The Athol*, 1 Wm. Rob. 374.

the forfeiture of immunity by a government owned vessel employed for commercial purposes.

The experience of judicial and administrative authorities in the United States during the last few years, when navigators of requisitioned vessels and government owned vessels have frequently been involved in litigation in courts in this country, and when large quantities of various kinds of property have been purchased here in behalf of foreign governments, suggests the unfortunate consequences of a general rule that courts of the United States are without jurisdiction to entertain a suit against the property of a foreign government within the jurisdiction of this country. If the theory of such an immunity is carried to its logical conclusion, it would seem to follow that not only may persons be deprived of the right to institute proceedings involving government owned property in tort and in contract but governmental authorities may be debarred from imposing equitable taxation on such property and from subjecting it to laws generally applicable to similar privately owned property. To the objection that the taking of jurisdiction by the courts in cases of this character is derogatory to the sovereignty of the government to which the property belongs, it seems a sufficient answer that it is equally and indeed considerably more derogatory to the sovereignty of the country in which the property is found to be shorn of vital attributes of sovereignty, exercised through administrative and judicial authorities, in order that such immunity may be granted.

It is interesting to observe in connection with this question of immunity of government owned vessels that the Act of Congress of September 7, 1916,[23] contains the following provision with regard to the operation of vessels purchased, chartered or leased from the United States Shipping Board:

> Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole, or in part, or hold any mortgage, lien or other interest therein.

The importance of harmonious practice among nations with re-

[23] 39 Stat. L. 728.

gard to questions such as those roughly sketched in this article is obvious. Considering the difficulties in the way of progress in attaining this object, it is unfortunately true that much time and effort will be required in making any appreciable headway in dealing with the numerous and various problems requiring solution.

FRED K. NIELSEN.

TREATMENT OF ENEMY ALIENS

(Being Part XVI of Some Questions of International Law in the European War. Continued from previous numbers of the JOURNAL.)

RIGHT OF ACCESS TO THE COURTS

English and American Doctrine and Practice. The question of the right of enemy subjects to sue in the courts of an adversary can hardly be said to be regulated by international law, unless the much-controverted Article 23(h) of the Hague Convention of 1907 respecting the laws and customs of war on land, is interpreted to apply to the actions of the judicial authorities. Certainly it is not true, as is sometimes asserted, that it is a principle of international law that they have no right of access to the courts of the adverse power. Like the practice in respect to trading with the enemy the matter is determined by the municipal law of each belligerent and is based upon considerations of public policy.[1] The early English common law rule was that an action could not be brought in an English court by or on behalf of an enemy alien except by virtue of a statute, order in council, proclamation or license from the Crown, or unless he came into the country under a flag of truce, or cartel, or in pursuance of some other act of public authority which put him in the King's peace *pro hac vice.* As long ago as 1454 Mr. Justice Ashton said that "an alien enemy who came here under the King's license or a safe conduct could maintain an action for trespass."[2] In the leading early case on the subject, *Wells* v. *Williams,* decided in 1698, and many times cited by the English courts during the recent war, it was held that, although an enemy alien was in England without a safe conduct, yet if he continued to reside there by the King's leave and protection and without molesting the government and without being molested by

[1] Compare Huberich, Trading with the Enemy, p. 191; also the recent Canadian case of *Korzwiski* v. *Harris Construction Co.* (1916), 18 Que. P. R. 97.

[2] 1 Salk. 45, quoted by the Court of Appeal in *Porter* v. *Freudenberg* (1915), 112 L. T. R. 313.

it, he could sue in the King's courts, for the exercise of such a right was a consequence of the protection offered him.[3] This rule was followed by Sir William Scott a hundred years later in the case of the *Hoop*[4] where he said:

> In the law of almost every country the character of alien enemy carries with it a disability to sue or sustain, in the language of the civilians, a *persona standi judicio*. The peculiar law of our own country applies this principle with great rigor. The same principle is received in our courts of the law of nations. They are so far British courts that no man can sue who is an enemy, unless under the particular circumstances that *pro hac vice* discharge him from the character of an enemy, such as the circumstances mentioned above.[5]

The rigor of this ancient rule which virtually treated enemy aliens as *ex lege* and without the right of access to the courts has recently been criticized as "a relic of barbarous days when the lives and property of all enemies were forfeit to the victor;"[6] nevertheless it left open a loophole by which the English courts have in fact been able to open their doors to enemy aliens while at the same time respecting the general principle of the old doctrine. In practice, whenever an enemy subject resident in England has been able to show that he was there with an express or implied license of the King he has been allowed to appear in the courts either as a plaintiff or a defendant. The onus

[3] 1 Ld. Raym. 282. Some question was raised by Mr. Justice Younger, in the case of *Schaffenius* v. *Goldberg* (1915) as to the authenticity of the phrase quoted above "without being molested by the government," which does not appear in several reports of the case. The matter was discussed at some length by counsel.

[4] 1 C. Rob. 196, 201 (1799). The case law of England and the United States is reveiwed by Huberich in his work on Trading with the Enemy, pp. 191 ff.

[5] Mr. Justice Story, in his Notes on the Principles and Procedure of Prize Courts (p. 21), adopted the same principle.

[6] Such is the opinion expressed by the London *Solicitor's Journal and Weekly Reporter* of January 23, 1915. See also the criticism by Dr. Sieveking, *International Law Association Reports*, 1913, p. 169, who remarks that "there is no earthly reason why a subject of one of the belligerent powers should not be allowed to appear in the courts of the other nation and obtain a judgment, provided execution, unless out of funds in the enemy's country, be stayed until the termination of the war. The idea of his being an alien enemy and therefore having no *persona standi judicio* is too old to be seriously considered."

of showing this has not been difficult, for enemy aliens who are allowed to remain in the country after the outbreak of the war have generally been assumed to be there by an implied license under the protection of the Crown. This follows as a logical consequence of registration, internment and other similar measures. It amounts to this, therefore, that under this rule practically the only enemy persons to whom the courts were closed during the late war were those resident in the enemy country or who, though resident in England, were not regarded as being under the protection of the Crown.[7]

Article 23(h) of the Hague Convention No. IV, of 1907.—Until 1907 there was no doubt that belligerents were free to close their courts to enemy subjects at will, that is to say, the question was one solely of municipal law; but it is not quite clear whether that liberty of action was not surrendered by the adoption of Article 23(h) of the Hague Convention of 1907 respecting the laws and customs of war on land. This provision declares that it is especially forbidden "*de déclarer éteints, suspendus ou non-recevables en justice, les droits et actions des nationaux de la partie adverse.*" The prohibition which it establishes was added at the suggestion of two German delegates, Herr Göppert and General von Gründell, the latter of whom in explaining its purpose in the committee said its object was not limited to protecting corporeal property from confiscation but that it had in view "the whole domain of obligations, by prohibiting all legislative measures which, in time of war, would place the subject of an enemy state in a position of being unable to enforce the execution of a contract by resort to the courts of the adverse party."[8] In other words, its object was to prohibit belligerents from depriving enemy subjects by legislation or otherwise of the means of enforcing their legal rights

[7] Compare Picciotto, "Alien Enemy Persons, Firms and Corporations in English Law," *Yale Law Journal*, 27:172 (1917). A classification of the holdings of the English courts in respect to the right of enemy aliens to sue may be found in the brief of the Attorney General in the case of *Re Merten's Patents* (1915), 112 L. T. R. 315. The decisions are grouped under three heads: (1) those upholding the right to sue; (2) those denying the right; and (3) those which deny the right to sue as plaintiffs but uphold the right to sue as defendants.

[8] *Deuxième Conférence International de la Paix, Actes et Documents*, Tome III, p. 103.

through resort to the courts. It therefore overruled the doctrine of the English and American courts that contracts with alien enemies are generally suspended or terminated by the outbreak of war and that enemy subjects have no rights of action in the courts except under the peculiar circumstances mentioned by Sir William Scott and Judge Story referred to above.[9]

English and American Interpretation of Article 23(h).—English and American authorities have, however, placed a different interpretation on the meaning of Article 23(h) and the matter has been the subject of much controversy. According to their view the purpose of the article in question was merely to prohibit commanding generals and their subordinates in the field from suspending or extinguishing the legal rights of the inhabitants and did not contemplate a restriction on the right of the state through its legislative, executive, or judicial organs to exclude generally enemy subjects from bringing actions in its courts.[10] In favor of this view it is argued that the position of Article 23(h) clearly shows that it was intended merely as a limitation on the powers of military commanders in the actual theater of hostilities. It is a part of a chapter entitled "Means of injuring the enemy; sieges and bombardments," which is in turn a subdivision of a general heading entitled "hostilities," all the provisions of which relate to the conduct of operations by military commanders. This view is strengthened by the declaration contained in Article I, that "the high contracting parties will issue to their armed land forces, instructions which shall be in conformity with the 'regulations re-

[9] This interpretation is that adopted by the German Government in its official *Weissbuch, Über die Ergebnisse der im Jahre 1907 in Haag Abgehalten Friedenskonferenz*, p. 7.

[10] This is the view expressed by General Geo. B. Davis in his Elements of International Law, p. 578; see also an article by him entitled "Amelioration of the Laws of War on Land," *American Journal of International Law*, Vol. II, p. 70. See also Trotter, Effect of War on Contracts During War, supp. 1915, p. 20, who remarks that the provision in question does not affect the ancient rule of the common law, that an alien enemy, unless with special license or authorization of the Crown, has no right to sue in the King's courts during war. See also Higgins' *Hague Peace Conferences*, p. 235; Cobbett's Cases on International Law, Part II, pp. 85-86; Holland, *Law Quarterly Review*, Vol. 28, p. 94; Huberich, *op. cit.*, p. 45; and Picciotto, *Yale Law Journal*, 27:170 (1917).

specting the laws and customs of war on land' annexed to the present convention." The logical inference, therefore, is that Article 23(h) is one of the "regulations respecting the laws and customs of war on land,"[11] and not a general rule of conduct for states in respect to the administration of justice.

The view of the British Government regarding the meaning of the clause was expressed by the Foreign Office in a letter of March 27, 1911, to Professor Oppenheim in response to an inquiry addressed by him on February 23 to the British Secretary of State for Foreign Affairs. Professor Oppenheim in his letter of inquiry called the attention of Sir Edward Grey to the fact that the interpretation which had been placed upon the clause by continental writers generally and even by some English and American authorities, a number of whom he cited, was in conflict with the old English rule. It was unfortunate, he added, that neither the English blue book relative to the Second Hague Conference[12] nor the official *procés verbale* of the conference indicated what was the purpose or intent of the provision. In its reply the Foreign Office, arguing mainly from the position which the article occupies in the text of the Convention, rejected the Continental interpretation and maintained that the article had no effect on the old English rule regarding the incapacity of enemy aliens to sue.[13]

[11] Professor Holland in commenting on this article (*Law Quarterly Review*, Vol. 28, pp. 94 ff.), remarks that "if this clause is intended only for the guidance of an invading commander it needs careful redrafting; if, as would rather appear, it is of general application, besides being quite out of place where it stands, it is so revolutionary of the doctrine which denies to an enemy any *persona standi in judicio* that although it is included in the ratification of the Convention by the United States on March 10, 1908, and the signature of the same on June 29, 1908, by Great Britain, it can hardly, till its policy has been seriously discussed, be treated as rule of international law." In his Laws of War on Land, p. 5, Professor Holland cites this paragraph as an instance of the inconvenience of intermixing rules relating to the duties of belligerent Governments at home with those intended to serve for the guidance of armies in the field.

[12] Parliamentary Papers, Misc. No. 4, 1907.

[13] Professor Oppenheim's letter and the reply of the British Foreign Office are printed in French in an article by M. Politis in the *Revue Gén. de Droit Int. Pub.*, 1911, pp. 250 ff. See also Trotter, Effect of War on Contracts During War, supp., p. 14, and Spaight, War Rights on Land, pp. 140-141. The Foreign Office,

Views of Continental Publicists.—Continental writers, however, almost without exception hold the contrary view. Among those who have so expressed themselves or who apparently assume that the German interpretation referred to above is the correct one may be mentioned Bonfils,[14] Ullman,[15] Wehberg,[16] de Visscher,[17] Sieveking,[18] Politis,[19] Despagnet,[20] Kohler,[21] Strupp,[22] Noldeke,[23] and Théry,[24] Dr. Sieveking, a German jurist, discussing the force of Article 23(h) before the International Law Association at its meeting in 1913, said:

> I think there can be no doubt whatever as to the meaning of this Article: an alien enemy shall henceforth have a *persona in judicio standi* in the courts of the other belligerent for all his claims, whether they originated before or during the war; his claim shall henceforth no longer be dismissed or suspended on account of his being an alien enemy; he shall be entitled to a judgment on the merits of the case, and this judgment shall be immediately enforceable. It has been argued that this article merely conveys instructions to officers commanding in the field and in no way touches the dealings of the Home Government and the law at home. If this were so it would mean that the German delegates proposed an article devoid of any meaning. An article might just as well have been inserted saying that officers in the field are not allowed to contract alliances or to declare

in its reply to Professor Oppenheim's inquiry, stated that the English rule works automatically at the outbreak of war; "no declaration," it said, "is needed in order to make commercial intercourse with alien enemies illegal and to withdraw from them the protection of the courts. The outbreak of war, *ipso facto*, without any proclamation, abolishes, suspends, and makes inadmissible the rights of the subjects of the hostile party to institute legal proceedings."

[14] *Manuel de Droit Int. Pub.*, p. 651.

[15] *Völkerrecht*, 2d ed., p. 474.

[16] Capture in War on Land and Sea, p. 8; also *Rev. de Droit Int. et de Lég. Comp.* 1913, p. 197.

[17] *Du caractère ennemie et de la condition des Personnes ennemies quant à l'exercise de leurs droits civils*, *Law Quarterly Review*, July, 1915, pp. 289 ff.

[18] *International Law Association Reports*, 1913, pp. 175-178.

[19] *L'Article 23(h) du Réglement de la Haye*, *Rev. Gén. de Droit Int. Pub.*, vol. 18 (1914), pp. 249 ff.

[20] *Cours de Droit Int. Pub.*, p. 825.

[21] *Zeitschrift für Völkerrecht*, 1911, p. 384.

[22] *Ibid.*, vol. 8, pp. 56 ff.

[23] *Deutsche Juristen Zeitung*, April 1, 1917, p. 374, French translation by M. Dreyfus, 44 Clunet, pp. 1354 ff.

[24] *Recevabilité des Sujets Ennemis à Ester en Justice en France*, 44 Clunet, pp. 480 ff.

war. Officers commanding in the field have nothing whatever to do with courts of justice, except an officer in command of an occupied district. But the rules as to the rights and duties of the army and the non-combatants in occupied territories and the administration of such territories are laid down in Articles 42 to 56 (Articles 43 and 48 in particular); and this would be saying the same thing twice over. No, this article was meant as a blow at the rule of the British law, and this intention could not have been more clearly expressed than it has been in Article 23(h).

Nevertheless, as Dr. Sieveking points out, the prohibition established by Article 23(h) relates only to land warfare and inasmuch as the great majority of cases likely to come before the British courts originate in maritime transactions the article could have only a very limited application in a war between Great Britain and some other power, even if the German view as to its meaning were admitted.

M. Politis, professor of international law in the University of Paris, in a report made to the Institute of International Law at its session in 1910, likewise expressed the view that the effect of Article 23(h) is to prohibit belligerents from interfering with the execution of contracts made before the outbreak of war and to condemn the old rule in respect to the incapacity of enemy aliens to sue in the courts of the adversary. It forbids, he says, all legislative or other measures tending to invalidate or to prevent the execution of private obligations.[25] In an article published in the *Revue Générale de Droit International Public* in 1911,[26] M. Politis reviewed at length the opinions of the text writers, all of whom, with the exception of General Davis of the United States, he says, adopt the view stated above. The only argument of any weight in favor of the view of the English Government is, he adds, that drawn from the position of clause 23(h) in the text of the convention—"an argument which is not only contrary to the plain language of the provision itself as well as the declaration of Herr Göppert in the committee, but is contrary to the whole spirit of the Hague convention which was to ameliorate the old usages of which the English rule in respect to the judicial incapacity of alien enemies is one of the most rigorous and indefensi-

[25] *Annuaire de l'Institut de Droit International*, T. 23, p. 268.
[26] Vol. 18, pp. 249 ff.

ble.'' It is also true, as M. Politis points out, that the official English interpretation has been condemned by a number of the leading English authorities.[27]

English Interpretation of Article 23(h) During the Recent War.—The English Government, however, during the recent war proceeded in accordance with the interpretation adopted by the Foreign Office in 1911 and the English courts followed this interpretation. The question was first presented to a British court in the case of *Porter* v. *Freudenberg* in 1915.[28] Adverting to the divergence of views among jurists as to the meaning of the clause Lord Reading said the court was clearly of the opinion that the effect was not to abrogate the old English rule.

> Our view, he said, is that Article 23(h), read with the governing Article 1 of the Convention, has a very different and a very important effect, and that the paragraph, if so understood, is quite properly placed as it is placed in a group of prohibitions relating to the conduct of an army and its commander in the field. It is to be read, in our judgment, as forbidding any declaration by the military commander of a belligerent force in the occupation of the enemy's territory which will prevent the inhabitants of that territory from using their courts of law in order to assert or to protect their civil rights. For example, if the commander-in-chief of the German forces which are at the present moment in military occupation of part of Belgium were to declare that Belgian subjects should not have the right to sue in the courts of Belgium, he would be acting in contravention of the terms of this paragraph of the article. If such a declaration were made, it would be doing that which this

[27] Phillipson, Effect of War on Contracts, p. 46; Higgins, *op. cit.*, p. 263; Lawrence, Principles, p. 358 (who says there can be little doubt that it was intended to have a different and far wider application); and Whittuck, International Documents, p. xxviii. Holland also apparently takes this view, for he remarks that the clause "seems to require the signatories to legislate for the abolition of an enemy's disability, to sustain a *persona standi in judicio*. Laws of War on Land, p. 5. Some American writers also adopt the Continental interpretation, *e.g.*, Bordwell, Law of War, p. 210; Gregory, Am. Jour. of Int. Law, Vol. II, p. 788; and Hershey, Essentials of Int. Pub. Law, p. 395, note 56.

[28] *Law Times*, Vol. 12, p. 313, 1 K. B. 857. President Monier, of the Tribunal of the Seine, in a decision of May 18, 1916 (*Wilmoth* v. *Daude*), without discussing the meaning of the clause declared that it was not binding on the French courts, because "an international convention cannot prevail over the contrary provisions of a municipal statute," and because the clause had been violated by Germany. See text of the decision in 43 Clunet, pp. 1303 ff.

paragraph was intended to make particularly forbidden by the solemn contract of all the States which ratified the Hague Convention of 1907. According to eminent jurists, the occupying military power is forbidden, as a general rule, to vary or suspend laws affecting property and private personal relations.[29] This article 23(h) has now enacted that, whatever else the occupying military power may order in the territory of the enemy which it domiciles, it shall not henceforth declare that the right of the subjects of the enemy to institute legal proceedings in the courts of that territory is abolished, suspended, or inadmissible. If this be its true force, the enactment as an international compact is not only of high value, but it has been inserted quite naturally and appositively in the position in the section and chapter of the Annex to the convention which it occupies.

The court then referred to the fact that

> On the eve of the outbreak of the war, the German Ambassador in London addressed a communication to the Foreign Office to this effect: "In view of the rule of English law, the German Government will suspend the enforcement of any British demands against Germans unless the Imperial Government receives within twenty-four hours an undertaking as to the continued enforceability of German demands against Englishmen." No arrangement, said the court, was arrived at. We refer to these two incidents not because either of them can affect our judgment on the question of the interpretation of Article 23(h), but because it is right that it should be made quite clear to everyone that as early as the spring of 1911 the view of the British Government as to its true interpretation was made public to the world, and that the situation was perfectly well understood by the German Government.[30]

Right to Sue as Plaintiffs Affirmed.—The decision in *Porter* v. *Freudenberg,* however, involved only the interpretation of a clause in the Hague convention. It did not affirm that the British courts were in fact closed to enemy aliens under all circumstances. There were at the time three classes of such persons in England: (1) prisoners of war in the strict sense of the term; (2) prisoners of war in a wider sense including those who were residents or who were temporarily sojourning there at the beginning of the war and who had been imprisoned for one reason or another, and (3) interned

[29] Here he quoted Hall, International Law, 6th ed., p. 465.

[30] A South African Court adopted the same view of the meaning of the article. *Labuschagne* v. *Maarburger,* So. Afr. L. R. (1915), Cape 423.

civilians. The Home Secretary stated in the House of Commons on November 26, 1914, that although all three classes were prisoners of war, the third class were in a different position from those belonging to the other two classes.[31] They were voluntarily in England by license of the Crown and were entitled to the protection of the law even though they were prisoners of war. They belonged to the category of persons referred to in the case of *Wells* v. *Williams* as being under the protection of the Crown and were therefore entitled to bring actions in the courts. On the basis of this distinction the Chancery Division in October, 1914, ruled that a Hungarian princess residing in England during the war and having properly registered in accordance with the aliens restrictions act was, although an enemy subject, entitled to bring an action for an injunction to restrain the defendant from continuing to publish certain libelous matter against her.

After adverting to the fact that there appeared to be a general impression that enemy aliens were not entitled to any relief at law in the courts of the country, Mr. Justice Sargent stated that the effect of registration was equivalent to a license to remain in the country; in fact it was a command to remain there. The law, he declared, had been correctly stated by Hall,[32] who says:

> When persons are allowed to remain either for a specified time after the commencement of the war or during good behavior they are exonerated from the liabilities of enemies for such time as they, in fact stay as they are placed in the same position as other foreigners, except that they cannot carry on a direct trade in their own country or other enemy vessels with the enemy country.
>
> Inasmuch, therefore, as the plaintiff is coming to insist on a right which is individual to herself, she has, in my opinion, by virtue of her registration and by virtue of the permission thereby granted her to reside in this country a clear right to enforce that right in the courts of this country, notwithstanding the existence of the state of war.[33]

[31] Interned Alien Enemies, *Law Quarterly Review*, April, 1915, p. 162.

[32] International Law, 6th ed., p. 388.

[33] *Princess Thurn and Taxis* v. *Moffitt*, 1 ch. 58 (1915). The Irish and Scotch Courts adopted this view in several cases. See Trotter, *op. cit.*, pp. 122-124. So did the courts of Canada. See especially the case of *Viola* v. *McKenzie, Mann & Co.* (1915), 24 Quebec B. R. 31; others are cited by Borchard in *Yale Law Journal*, 27:107, and by Huberich, *op. cit.*, p. 200.

In the above-mentioned case the plaintiff was not an interned prisoner of war. Her position was therefore somewhat different from that of the plaintiff in the case of *Schaffenius* v. *Goldberg*[34] where the plaintiff was an interned civilian prisoner who had long resided in England and who had duly registered under the Aliens Restriction Act. In the latter case the question was presented to the Chancery Division whether the internment as a prisoner, of an enemy alien, operated to revoke the license to remain in the country—such license being implied by registration under the Aliens Restriction Act—and therefore to deprive him of the protection of the Crown. The court held that internment had no such effect, but on the contrary, rather strengthened the license; consequently the plaintiff was entitled to bring an action to enforce a contract entered into between him and a British subject after the internment of the plaintiff.[35] After adverting to the recent decision in the case of the *Duchess of Sutherland*[36] where it was held that an enemy alien resident in an allied or neutral country could sue in a British court the Court of Appeal said it followed, *a fortiori,* that such a person, if resident in England, and especially if interned, could equally maintain an action. "In a case like the present," the Court said, "where the plaintiff is effectually prevented from leaving this country, there is no reason of state or public policy why the principle just alluded to should not be given full effect. The case would be quite different if the plaintiff were to remove to enemy territory. He would then become an enemy in the full sense, no longer able for the duration of the war to enforce his civil rights, or sue, or proceed in the civil courts of the realm."[37]

The argument advanced by the defendant that internment was equivalent to the revocation of the license to remain, which was implied by the requirement of registration, Mr. Justice Younger held

[34] 1 K. B. 184 (1916), and *Solicitors Journal and Weekly Reporter,* 60:8.

[35] Compare the case of *Nordman* v. *Rayner,* 33 T. L. R. 87 (1916), which was also a case of "innocent" internment.

[36] 31 L. T. R. 248.

[37] The case would also probably have been different if it had not been a case of "innocent" internment, that is, if the plaintiff had been interned on account of some overt hostile act. Compare McNair, Alien Enemy Litigants, 34 *Law Quarterly Review,* 135.

to be inadmissible. He then referred to the decision in the case of the *Princess Thurn and Taxis* v. *Moffitt* where it was said that the permission to remain really amounted to a command not to depart without special leave, from which it was clear more than ever that internment was merely a further security that the command would be obeyed. In that case the plaintiff was not interned as a prisoner of war, though she was registered. If she was allowed to bring an action there was no reason for denying the privilege to an interned enemy alien. In short, internment did not alter the position of a registered alien. The danger of allowing an enemy alien to sue would, if anything, be less when he was interned than if left at large.

It is true in a very real sense, said the court, that the plaintiff is a prisoner of war,[38] but it would indeed be strange if that circumstance, without more, should have the extraordinary effect upon his rights attributed to it. It is common knowledge amongst us that the internment of a civilian enemy does not necessarily connote any overt hostile attitude on his part.[39]

Effect of the Decision.—The decision in *Schaffenius* v. *Goldberg* marked a very important relaxation from the rigor of the old rule and was strongly approved by fair-minded persons in England.[40] It was in accord with the most elementary notions of justice and humanity. So long as enemy subjects were allowed to remain in England it was necessary to allow them legal means of enforcing the payment of debts due them, to say nothing of other contracts. When they were interned in concentration camps and their property and business placed in the hands of custodians and controllers it would have been a gross hardship to deprive them of the legal remedy of obtaining the necessary means of subsistence. In consequence of the internment of practically the entire enemy alien population the effect of the decision was to open the English courts to the great mass

[38] The Divisional Court in the Case of *Rex* v. *Liebmann* had held that the internment of a civilian of enemy nationality made him a prisoner of war.

[39] Upon appeal the view and reasoning of the Divisional Court were affirmed by the Court of Appeals.

[40] See, e.g., the *London Solicitors Journal and Weekly Reporter*, Vol. 59, p. 761. See also the favorable comment by a French writer, in 43 Clunet, pp. 435 ff.

of enemy subjects left in England. The rule thus laid down was followed by the courts in other similar cases.[41] With a few exceptions the only enemy aliens to whom the courts were closed were those residing in enemy territory.[42] The Court of Appeal even held that a company registered in England, even if all its shareholders except one were enemy subjects resident in enemy territory, could maintain an action in an English court, but this holding was overruled by the House of Lords.[43]

Nevertheless, the right of action thus recognized was contested by high legal authority. It was asserted, for example, that the case of *Wells* v. *Williams*, upon which the recent decisions were mainly based, was not strictly an analogous case. That case involved the right of a French subject who came into England during the war between England and France without a safe conduct. Yet he came with the permission of the King and with the promise of his protection, whereas in the recent cases the plaintiffs had not been invited to come and no express promise of protection had been made. If there was any such promise it existed only by the broadest implication.

It was also pointed out that the decisions were not in accord with the later cases of *Alciator* v. *Smith* (1812) and of *Alcinous* v. *Nigreu* (1854) in both of which enemy aliens were denied the right to sue in British courts. At the outbreak of the wars of 1812 and 1854 there

[41] For example, in the case of *Gow & Co.* v. *The Bank of Scotland*. See the *Law Times* of October 2, 1915. Other cases are cited in Huberich, p. 209. In the case of *Schaffenius* v. *Goldberg* the contract in question was entered into *after* the outbreak of the war. In the case of *Mayer* v. *Finksibler* it was held that a contract entered into between two parties *before* the outbreak of the war, one of whom was subsequently interned as an enemy alien, was unaffected, and the latter's right to sue for its enforcement remained. Picciotto, article cited, p. 169.

[42] Persons voluntarily residing in enemy territory were not allowed to bring actions in the English courts. See the case of *Scotland* v. *South African Territories, Ltd., Law Times*, 142:366 (1917).

[43] *Continental Tyre & Rubber Co.* v. *Daimler*. 1 K. B. 893 and 2 A. C. 307 (1916). The High Court of Australia held, in the case of *Welsbach Light Co.* v. *Commonwealth*, 22 Com. L. R. 268 (1916), that domestic corporations controlled by enemy directors or shareholders were enemies and could not therefore sue; but in *Amorduct Mfg. Co.* v. *Defries & Co.*, 31 T. L. R. 69 (1914), it was held that a company registered in England might sue, although nearly all of the shares were held by enemy aliens.

had been no invitation to enemy aliens to remain as there had been in 1696 upon the outbreak of the war with France. Nevertheless in the *Alciator* case the plaintiff had been under a régime of registration similar to that of the recent war. But the court held that the fact of registration was not to be regarded as a license.[44]

Writ of Habeas Corpus Denied to Interned Enemy Aliens.—The question whether a writ of *habeas corpus* could issue to an interned German civilian was raised by the case of *Rex* v. *Supt. of Vine Street Police Station ex parte Liebmann.*[45] The Crown contended that the applicant being a prisoner of war the writ could not issue. The court held, on the authority of *ex parte Weber*,[46] that he was an enemy alien, and having regard to the fact that spying had become the hall mark of German kultur, a person of German origin who had obtained a discharge from his German nationality but resident in the United Kingdom, who in the opinion of the executive is a person hostile thereto and is on that account interned may properly be described as a prisoner and not therefore entitled to the writ.

Turning to the question as to whether the applicant was in the position of a prisoner of war, Mr. Justice Bailhache said:

> It is at first sight somewhat startling to be told that a civilian resident of this country, interned by the police on the instructions of the Home Secretary, can be accurately described as a prisoner of war. One generally understands by a prisoner of war a person captured during warlike operations by the naval or military forces of the Crown, or, perhaps, a civilian arrested as a spy. I think, however, that the courts are entitled to take judicial notice of certain notorious facts which may be summarized thus: There are a large number of German subjects in this country. This war is not

[44] Compare an editorial in the *Law Magazine and Review*, for July, 1915, pp. 215 ff., where the recent decisions that an enemy alien who has not been expelled but is subject to internment or registration is in England by license and therefore entitled to the privilege of suing, is severely criticised. See also Baty & Morgan, War; Its Conduct and Legal Results, pp. 254, 269.

[45] 1 K. B. 268 (1916).

[46] 1 K. B. 280 (1916). In this case an application for a writ of *habeas corpus* by a German residing in England who claimed that he had lost his German nationality by long absence and who was not therefore an enemy alien, was denied on the ground that he had not produced sufficient proof of his loss of nationality. This decision was affirmed by the Court of Appeal and later by the House of Lords, 1 A. C. 421 (1916).

being carried on by naval and military forces only. Reports, rumors, intrigues, play a large part. Methods of communication with the enemy have been entirely altered and largely used. I need only to refer to wireless telegraphy, signalling by lights, and the employment, on a scale hitherto unknown, of carrier pigeons. Spying has become the hall mark of German kultur. In these circumstances a German civilian in this country may be a danger in promoting unrest, suspicion, reports of victory, in communicating intelligence, in assisting the movement of submarines and Zeppelins, a far greater danger, indeed, than a German soldier or sailor.

In a contest with people who consider that the acceptance of hospitality connotes no obligation and that no blow can be foul, it would, I think, be idle to expect the executive to wait for proof of an overt act or for evidence of an evil intent. In my opinion this court is entitled to take judicial cognizance of these matters, and in a question so greatly involving the security of the realm to say that where the Crown in the exercise of its undoubted right and duty to guard the safety of all represents to this court that it has become necessary to restrain the liberty of an alien enemy within the kingdom, and accordingly within the terms of the notice served in this case, to intern such alien enemy as a prisoner of war, he must be regarded for the purpose of a writ of *habeas corpus* as a prisoner of war.

Inasmuch as practically the entire enemy alien population was interned the effect of this decision was to deprive all enemy aliens with a few exceptions of the benefit of the writ.

Right of a Firm Domiciled in Germany to Sue Denied.—In the case of *Re Mehelin Hemcoth, Limited,* a firm composed of three partners, all Germans resident and domiciled in Germany and having its principal place of business in Germany, but having a branch house in Manchester, the question was raised as to the right of an enemy company to bring an action in a British court to recover for goods sold and delivered to British subjects. The plaintiffs pleaded that since their Manchester business was a branch house they were entitled, under the proclamation of September 9, 1914, to bring the action even though they were enemy subjects. Without deciding whether a license issued to an enemy branch house to trade included the right to sue, the court held that there was nothing in the proclamation which enabled the plaintiffs to recover, where otherwise as alien enemies they could not do so. The proclamation, it was said, did not enable an alien enemy to sue in respect of obligations incurred be-

fore the war and they were not suing in respect of any transactions authorized by the proclamation.[47]

Right of Enemy Aliens to Defend Actions Against Them.—Regarding the right of an enemy subject to appear and defend an action brought against him by a British subject, there appears to have been little or no judicial authority before the recent war.[48] The right of an enemy to defend an action had, however, been affirmed by the United States Supreme Court in the *McVeigh* case.[49] The question was first raised and disposed of during the recent war in the case of *Robinson & Company* v. *Continental Insurance Company of Mannheim*, decided in 1915.[50] The pleadings in the suit had been concluded before the outbreak of the war and after the beginning of hostilities it was contended on behalf of the defendants that under the common law all actions between British subjects and enemy aliens were suspended by the outbreak of war and that consequently an enemy alien could not be heard as a defendant. Mr. Justice Bailhache affirmed, however, that this contention was at variance with the decision of Lord Erskine in *ex parte Boussmaker*[51] where it was held that an enemy alien could appear in bankruptcy proceedings to protect his right to a dividend. There was abundant authority, he said, for the view that an enemy alien could not appear as a plaintiff if objection was made by the defendant, but it did not follow that the converse was true. There were good reasons, he went on to say,

[47] *Law Times*, May 8, 1915, p. 25.

[48] Schuster, Effect of War and Moratorium on Commercial Transactions, p. 13. In actions against enemy aliens by British subjects for the enforcement of contracts the defense of alienage on the part of the defendant has long been regarded with disfavor by the English courts even when the suit involved intercourse with the enemy. Lord Kenyon pronounced it an "odious plea" and declared that whoever sets it up must produce the clearest evidence that the defendant is by nationality or domicile an enemy. A case involving this question during the recent war was that of *Schmitz* v. *van der Veen* (K. B. Div. 112, T. L. R. 99, 1915), where the court overruled the plea of the defendant that being an enemy alien he could not be made the object of a suit at the instance of a British subject. The plaintiff, it was held, was entitled to recover on a contract made before the war, and there was no common law rule which suspended such contracts. So in the case of *Halsey* v. *Lowenfeld*, the King's Bench Division held in 1916 that an action might be maintained against an enemy subject for arrears of rent accruing after the outbreak of war. 1 K. B. 143 (1916).

[49] 11 Wall. 259. [50] 1 K. B. 155 (1915). [51] 13 Ves. 71 (1806).

why an enemy alien might be denied the right to appear as a plaintiff to enforce rights which but for the war he would be entitled to enforce for his own advantage and to the detriment of English subjects, but "to hold that a [British] subject's right of suit is suspended against an enemy alien would defeat the object and reason of the suspending rule; in short, the effect would be to convert that which during war is a disability, imposed upon an enemy alien because of his hostile character, into a relief from the discharge of his liabilities to British subjects. To allow an action against an enemy alien and to refuse to allow him to appear and defend himself would be opposed to the fundamental principles of justice.[52]

Justice Bailhache said:

Prima facie there seems no possible reason why our law should decree an immunity during hostilities to the alien enemy against the payment of just debts or demands due to British or neutral subjects. The rule of law suspending the alien enemy's right of action is based upon public policy, but no considerations of public policy are apparent which would justify preventing the enforcement by a British or neutral subject of a right against the enemy.

Once the conclusion is reached that the alien enemy can be sued, it follows that he can appear and be heard in his defense and may take all such steps as may be deemed necessary for the proper presentment of his defense. If he is brought at the suit of a party before a court of justice he must have the right of submitting his answer to the court. To deny him that right would be to deny him justice and would be quite contrary to the basic principles guiding the King's courts in the administration of justice.

Turning then to the question as to whether an enemy alien who in a lower court may appeal to a higher tribunal, Mr. Justice Bailhache said:

Equally it seems to result that, when sued, if judgment proceed against him, the appellate courts are as much open to him as to any other defendant. It is true that he is the person who may be said in one sense to initiate the proceedings in the appellate court by

[52] There is no rule of common law, said the *London Solicitors Journal and Weekly Reporter* (October 23, 1914, p. 7), which suspends an action in which an alien is a defendant and no rule of common law which prohibits him from appearing and conducting his defense. "Whatever may be the extent of the disability of an alien enemy to sue in the courts of a hostile country," said the *London Times* of October 17, 1914, "it is clear that he is liable to be sued, and this carries with it the right to use all means and appliances of defense."

giving the notice of appeal, which is the first necessary step to bring the case before the court, but he is entitled to have his case decided according to law, and if the judge in one of the King's courts has erroneously adjudicated upon it, he is entitled to have recourse to another and an appellate court to have the error rectified. Once he is cited to appear he is entitled to the same opportunities of challenging the correctness of the decision of the judge of first instance or other tribunal as any other defendant.[53]

The right of an alien enemy to appear as a defendant was affirmed by the court of appeal in the case of *Porter* v. *Freudenberg*.[54] This was a case in which a British subject brought an action against a German subject to recover rent due on a lease made in 1903. The defendant resided in Berlin but had a branch house in London. "To allow an alien enemy to sue or proceed during war in the civil courts of the King," said the court, "would be, as we have seen, to give to the enemy the advantage of enforcing his rights by the assistance of the King with whom he is at war. But to allow the alien enemy to be sued or proceeded against during the war is to permit subjects of the King or alien friends to enforce their rights with the assistance of the King against the enemy."[55]

[53] Compare also the case of *Ingle* v. *Mannheim Ins. Co.*, 1 K. B. 227 (1915), and the comment in the *Solicitors Journal and Weekly Reporter*, November 7, 1914. In this case the King's Bench Division held that the Trading with the Enemy proclamation of October 8, 1914, did not prevent a British subject from receiving money from or suing an enemy alien where the right to be paid or to sue had accrued before the defendant had acquired the status of an enemy alien.

[54] *Times Law Rep.*, Vol. 112, p. 313; 1 K. B. 857 (1915) and *Solicitors Journal and Weekly Reporter*, January 23, 1915, p. 216.

[55] Schuster (Effect of War and Moratorium on Commercial Transactions, p. 3) calls attention to one possible practical difficulty which enemy defendants had to face in England, namely the difficulty of obtaining the services of solicitors owing to the fact that there was some doubt as to whether an English solicitor might lawfully defend the case of an enemy alien. The suggestion was made during the prize court hearing in the case of the *Möwe* that perhaps solicitors were debarred by the Trading with the Enemy Act from defending enemy aliens. Clause 5 of the Act of 1914 forbade British subjects from entering into any commercial, financial or other contracts or obligations with an enemy alien. But the *Solicitors Journal and Weekly Reporter* of November 7, 1914 (p. 35), expressed the view that the prohibition in question was not intended to apply to professional relationships and therefore the hiring of solicitors was no more illegal than the employment of a physician. "We have by this time," said the editor, "advanced too far to say that an alien enemy is entirely without rights unless that is laid down absolutely, unless, that is, we relapse

The rule laid down in the above-mentioned cases that an enemy alien who was sued by a British subject was entitled to appear and defend the action was, however, the subject of criticism by high English authority, on the ground that it was inconsistent with the old doctrine of the suspension and cancellation of contracts, as well as contrary to the reason on which non-intercourse with the enemy is forbidden.[56] But it appears to be based on good sense and is in harmony with elementary notions of justice.[57]

into the *ex lege* doctrine. Aliens must be entitled to legal assistance and we incline to think that the legal profession would fail of its boasted traditions if it refused assistance." In fact, the difficulty appears not to have been serious, for members of the English bar freely gave advice to enemy aliens.

A more serious practical difficulty in suing an enemy was the problem of serving process on him. The English courts met the difficulty to some extent by allowing substituted service of notices on agents in England or Holland where there was reason to believe that knowledge of the proceedings would be transmitted to the principal. Lord Justice Scrutton in 34 *Law Quarterly Review*, 124.

[56] For example, by Baty and Morgan, War: Its Conduct and Legal Results, p. 288. These authors as well as others contend that the authority of the U. S. Supreme Court in the *McVeigh* case is not applicable in an international war. Moreover, they add, the opinion of the court in that case, so far as it related to the right of an enemy alien to be sued, was *obiter dicta*, since the defendant was not in fact an enemy alien, the parties being enemies only in a technical sense. Both were in fact citizens of the United States and could not be "kept out of the courts of the United States." The *London Solicitors Journal and Weekly Reporter* of January 23, 1915 (p. 212), criticised the decision in *Robinson* v. *Continental Insurance Co. of Mannheim* as being "a singular mixture of ancient law and modern ideas" because it held that an enemy alien cannot sue unless he is resident in England and registered or interned or unless he turns himself into an English company, although he may be sued and subject to an exception, may take an appeal to a higher court. Mr. E. G. Roscoe in a letter of October 27, 1914, to the editor of the *Solicitors Journal* (59:23) ventured the opinion that the ruling in this case was inconsistent with the opinion of Sir William Scott in the case of the *Hoop*. "I do not say," Mr. Roscoe adds, "that the principles laid down by Mr. Justice Bailhache are not eminently desirable, but are they actually in accordance with the principles of English law as hitherto laid down?" To this communication the editor replied that Sir William Scott was dealing with the right of an enemy alien to sue as a plaintiff and not as a defendant, and therefore his remarks regarding the incapacity to sue could not be interpreted as denying the right of defense (*Ibid.*, October 31, 1914, p. 20).

[57] Compare the Views of Picciotto, article cited, p. 173, and of Lord Justice Scrutton, The War and the Law, 34 *Law Quarterly Review*, 123.

Practice of the Prize Court in Respect to Enemy Claimants.—The question as to the right of a non-resident enemy subject to appear as a claimant in prize proceedings and to defend his claim was passed upon by the President of the British prize court in the case of the *Möwe* decided on November 9, 1914.[58] Sir Samuel Evans held that although no legal right to appear and defend existed, he would, in the exercise of the power which belonged to the court to adopt rules of practice, allow enemy claimants to appear and defend any right claimed under the Hague Convention respecting the treatment of enemy merchant vessels found in port at the outbreak of the war. Counsel for the claimants argued that they were not plaintiffs claiming the restitution of the ship, but defendants seeking to avoid condemnation and they cited numerous authorities, English and American, in support of the right of an enemy subject to appear in court as a defendant.[59]

Sir Samuel Evans reviewed at length the practice and jurisprudence during the Crimean, Spanish-American and Russo-Japanese wars, in all of which enemy claimants were allowed to appear in prize proceedings but only because there were special circumstances which *pro hac vice* suspended their enemy character for the purpose of suing.[60] In the present case, however, there was no coming *pro hac*

[58] Trehern, British and Colonial Prize Cases, Vol. I, pp. 60 ff. The question had already been raised in the cases of the *Chili* and the *Marie Glaeser*, but a ruling on the merits of the question was not necessary to the judgment.

[59] Among others, the English cases of *Janson* v. *Dreifontein Consolidated Mines Company* (1902), *Robinson* v. *Continental Insurance Company of Mannheim* (1914), and the American case of *McVeigh* v. *the United States*, 11 Wall. 259.

In the argument in the *Möwe* case, both counsel for the claimant and the Attorney General argued in favor of the right of an enemy alien claimant to appear and defend his claim. The Attorney General even went to the length of suggesting that in case the existing law did not allow such a right, the Government would be prepared to issue an order in council expressly authorizing it.

[60] Among the American cases cited in which enemy persons were allowed to appear in prize courts and assert their claims were the *Pedro*, 157 U. S. 354 (1899), the *Guido*, 175 U. S. 382 (1899), the *Buena Ventura*, 175 U. S. 384 (1899), the *Panama*, 176 U. S. 535 (1900), and the *Paquette Habana*, 175 U. S. 677 (1900). Among the Japanese cases were the *Tetartos*, 1909, Hurst & Bray, Russian and Japanese prize cases (Vol. I, p. 166), the *Ekaterinoslav*, 1905

vice within the King's peace, no suspension of the hostile character and he was satisfied that neither Lord Stowell nor Dr. Lushington would have allowed an enemy owner to appear to assert a claim in a case similar to this.

Nevertheless, permission to an enemy to sue was not a matter of international law but of court practice and he thought the prize court had the inherent power to regulate its own practice unless prohibited by law. Lord Stowell did so from time to time and his right was not questioned.

"A merchant," said Sir Samuel, "who is a citizen of an enemy country would not unnaturally expect that when the state to which he belongs, and other states with which it may unhappily be at war, have bound themselves by formal and solemn conventions dealing with a state of war, like those formulated at the Hague in 1907, he should have the benefit of the provisions of such international compacts. He might also naturally expect that he would be heard, in cases where his property or interests were affected, as to the effect and results of such compacts upon his individual position."

In view of these considerations and in order "to induce and justify a conviction of fairness, as well as to promote just and right decisions," Sir Samuel announced that he would direct that whenever an enemy subject conceived that he was entitled to any protection, privilege or relief under any of the Hague Conventions of 1907 he would be allowed to appear as a claimant and argue his claim before the court.[61]

(*ibid.*, II, 1), the *Mukden*, 1905 (II, 12), the *Rossia*, 1905 (II, 39), the *Argun*, 1905 (II, 46), the *Manchuria* (II, 52), the *Lesnik* (II, 92), the *Kobik* (II, 95), the *Thalia* (II, 116), and the *Oriel* (II, 534).

[61] The British prize court in Egypt adopted the same rule in the case of the *Gutenfels* (Trehern's Cases I, 102). Judge Cator in his opinion declared the old rule to be a "barbarous one which runs counter to all sense of natural justice and it seems strange that it should be found embodied in the practice of any English prize court. If it is right that we should insist upon hearing a man in his own defense in those courts where the parties of one nation, and the judge may be expected to be quite indifferent as to which suitor should succeed, it seems to me to be still more important that the enemy party should be heard in a prize court when the crown claims condemnation of his ship and the judge's sympathies must be supposed to be in favor of his own country. It is much to be regretted that this question did not occupy the attention of

It will be seen that the doctrine here laid down by the British prize courts is theoretically in accord with the old rule, for it denies the legal right of an enemy subject to appear as a claimant and defend his claim to property in the custody of the prize court. The concession here granted was in fact limited to those only who claimed rights under the Hague Conventions, and even it was accorded as an act of grace on the part of the court and might be withdrawn at any time in the discretion of the judge. The decision therefore did not go to the length to which the King's Bench division and the Court of Appeal went in the cases referred to above. It is submitted that the prize court might have gone further, overruled the ancient doctrine and laid down the broad principle that enemy subjects have a right to be heard not only when they assert claims under the Hague Convention but also for any other reason.[62]

Legislation and Practice in the United States.—Section 7, paragraph b, of the Trading with the Enemy Act of October 6, 1917, declared that nothing in the said Act should be deemed to authorize the prosecution of any suit or action at law or in equity in any court "within the United States" by an enemy or an ally of an enemy prior to the end of the war, provided that such person if licensed to do business under the act might prosecute any suit arising solely out of such business transacted in the United States and any enemy or ally of an enemy might defend by counsel any suit or action brought against him. Receipt of notice from the President to the effect that he had reasonable ground to believe that any person was an enemy or an ally of an enemy should be *prima facia* defense to any one re-

the Hague Conference. I have little doubt what the opinion of the Conference would have been, and feel sure that most of the delegates would have been surprised that in a British Prize Court the owner of captured property has no right to present his case against the Crown if he be an alien enemy."

Speaking of the old practice Judge Cator said: "The fact is, the rule is a bad rule, much more to be honored in the breach than in the observance; and if we must acknowledge ourselves to be so far fettered by the dead hand of outworn precedent as to recognize its continued existence, I am, at any rate, determined to permit all such breaches of it as my sense of equity and fair dealing towards the enemy may demand."

[62] It is refreshing to find the London *Solicitors Journal and Weekly Reporter* advocating this view. See the issue of November 14, 1914.

ceiving the same, in any suit or action brought by such person and based on failure to complete or perform since the beginning any contract or other obligation. By section 10, paragraph g, enemy subjects were empowered to bring and prosecute suits in equity against any person other than licensees to enjoin infringements of patents, trade marks, prints, labels and copyrights in the United States, owned or controlled by such persons, provided that no final judgment or decree might be entered in their favor except after thirty days notice to the alien property custodian. The full import of Section 7, paragraph b, is not quite clear. It conferred upon enemy subjects who had licenses to do business in the United States the right to sue in respect to issues arising out of such business but it conferred no such right upon other enemy persons, although it did not expressly prohibit them from suing. Nevertheless, as they are prohibited by a common law rule from bringing actions, express authority to do so would probably be necessary. The section referred to speaks of "any court within the United States," but it may be doubted whether Congress may prohibit an enemy alien from suing in a state court. Two points, however, are clear, namely, that enemy subjects might defend actions brought against them but that they could not bring actions in respect to unperformed contracts against any one in the United States. Several cases involving the right of Germans to sue in the state courts arose in 1917. In the case of *Posselt* v. *D'Espard*[63] a court of Chancery in New Jersey declined to stay a suit brought by a person erroneously assumed to be a German subject, resident in the United States, and the manager of a corporation, a majority of the stock of which was owned by a German corporation for the preservation of the rights of the complainants as stockholders in a New Jersey Corporation.[64]

[63] 100 Atlantic Reporter, 893 (1917).

[64] The court said, *inter alia*, "The solution of the problem now before me, I think, is found in the President's message to Congress, which in view of the nature of its reception by Congress and the action of Congress under it has become the voice of the country; and the President's proclamation declaring a state of war and defining rights of residents, an official act under authority of Congress. German residents who comply with needful regulations and who properly conduct themselves are assured that they will be undisturbed in the

The New York Supreme Court declined to follow the decision of the English House of Lords in the Continental Tyre & Rubber case and held that a New Jersey corporation, a large majority of the shares of which were owned by a German corporation and a German subject resident in Germany, was an entity separate and distinct from its stockholders and was therefore entitled to maintain an action. After reviewing the American cases at length the court reached the conclusion that the decisions were practically unanimous in regarding a corporation as a thing apart from its corporators and that the rule laid down by the House of Lords was not in accord with American precedents. Therefore, a corporation, created under the laws of any one of the States could not be deprived of access to the courts for the protection of its legal rights, notwithstanding the fact that a large majority of the individual stockholders were enemy subjects resident in enemy territory.[65]

In a suit brought by German subjects resident in Germany to recover money due them by an American firm, before the declaration of war, however, a United States District Court directed the proceedings to be suspended rather than dismissed, until the restoration of peace.[66]

A motion to dismiss a complaint filed by a resident enemy or to stay proceedings was denied by the Supreme Court of New York. There was nothing in the Trading with the Enemy Act, said the Court, which was applicable to the case and there was no evidence that it was the intention of Congress or the President to deny to the plaintiff the exercise of the same civil rights enjoyed by neutral aliens. The Court added:

> With only a few exceptions the nations of all the earth both advocate and practice many ameliorations of the acerbities of war. In that endeavor this nation is not backward. No limitation is

peaceful pursuit of their lives and occupations and be accorded the consideration due all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States. To shut the door of the court in the face of an alien enemy resident here would be a distinct violation of not only the spirit but the letter of this proclamation."

[65] *Fritz Schultz, Jr.*, v. *Raimes & Co.* (1917) 166 N. Y. supp. 567. The leading Federal case upon which the court relied was *Bank of U. S.* v. *Deveaux*, 5 Cranch U. S. 61.

[66] *Plettenberg, Holthaus & Company*, v. *Kalmon & Company*, 241 Fed. Rep. 605.

placed upon the freedom of resident subjects of a foreign State with which we are at war, unless that limitation is deemed necessary to withhold from that enemy the aid or comfort which may advance his cause. Mere technical or arbitrary rules are neither enacted, nor, when found in ancient usage, enforced. How could our own plans be served or those of Germany defeated or impaired by closing against the plaintiff the doors of our courts? While I should be inclined to hold that the plaintiff is entitled to maintain her action on the ground that within the purview of the Trading with the Enemy Act she is not an alien enemy engaged in trade subject to suspension by the Federal Government, I prefer to deny the motion on the broad ground that the resident subjects of an enemy nation are entitled to invoke the process of our courts so long as they are guilty of no act inconsistent with the temporary allegiance which they hold for this Government.[67]

There is a large amount of American case law relative to the right of enemy aliens to sue and this may be briefly summarized as follows:[68] An enemy subject cannot bring an action in an American court during the continuance of war nor prosecute one instituted before its commencement, but this disability applies only to a non-resident enemy and not to those who are permitted to enter or remain in the United States during the war. "A lawful residence implies protection and a capacity to sue and be sued."[69] Some state courts have held that where an action has been commenced before the outbreak of war the proceedings are only suspended, whereas a suit commenced after the outbreak of war will be dismissed; others have held that where the plaintiffs become enemy aliens subsequent to the institution of the suit the action should be dismissed without prejudice. The American courts have uniformly held that enemy aliens may be made defendants at the instance of American citizens who are seek-

[67] *Arndt-Ober* v. *Metropolitan Opera Co.*, 58 *N. Y. Law Jour.* 1347 (1918). See also the case of *Speidel* v. *N. Barstow Co.*, 243 N. Y., 621 (1917).

[68] This summary is made mainly from an article entitled "Alien Enemies as Litigants," published in *Case and Comment* for June, 1917, pp. 93 ff. This article appears to contain an exhaustive examination of the cases decided by the American courts. See also Borchard, Right of Alien Enemies to Sue, *Yale Law Journal*, 27:105; Huberich, On Trading with the Enemy, pp. 188 ff., and 194 ff., and Mitchell, in the *Maine Law Review*, November, 1917.

[69] *Clarke* v. *Morey*, 10 Johns, 69 (1813); and *Norddeutsche Ins. Co.* v. *Dudley*, *N. Y. Law Jour.*, January 11, 1918.

ing to protect their property and enforce their rights but where an enemy alien is sued he is entitled to appear by attorney and be heard in his defense.[70] But a non-resident enemy alien cannot prosecute a counter claim.[71]

FRENCH LAW AND PRACTICE.

Early Opinion and Practice.—As to the right of enemy subjects to sue either as plaintiffs or defendants in the courts of France there appears to have been little judicial authority or positive legislation prior to the recent war. There was, however, a decision of the *parlement* of Douai in 1704 to the effect that a subject of an enemy power could not sue a subject of the King of France, when the latter had by decrees prohibited all relations between his subjects and those of the enemy country. There also appears to have been an "act of government" in 1803 and a decision of the Court of Cassation in 1806 affirming this principle.[72]

French Legislation of 1914 and 1915.—During the recent war no legislation expressly denying the right to sue was enacted by the French parliament or proclaimed by decree of the government, but those who adopt the view that the right to sue does not exist, either rely upon the legislation and jurisprudence of the first Empire, referred to above, which they say has never been repealed, or upon the terms of the decree of September 27, 1914, prohibiting commercial relations with the enemy and the act of parliament of April 4, 1915, which prescribes penalties for violation of the decree. Article 2 of the decree referred to declared null and void as being contrary to public policy (*l'ordre public*), every act or contract performed or entered into either in French territory or in a French protectorate,

[70] As was pointed out above this rule was adopted by the United States Supreme Court in the case of *McVeigh* v. *the United States*, 11 Wall. 259 (1870), and it has been followed by the State courts in many cases. See the cases cited in an article in 3 *Va. Law Register*, 1917, p. 102, n. 45.

[71] This was also the decision of the King's Bench Division in the case of *Robinson* v. *Continental Ins. Co.*, 31 *Times Law Reports* 20 (1915) referred to above.

[72] On the French practice and doctrine, see two valuable articles by Professor Jules Valéry, of Montpellier, in the *Rev. Gén. de Droit Int. Pub.*, 1916, pp. 379 ff. and in Clunet's *Journal de Droit Int. Privé*, 1915, pp. 1009 ff.

with subjects of the German or Austro-Hungarian Empires or with persons residing therein. Article 3 prohibited and declared to be null as contrary to public policy, the execution for the benefit of the subjects of the said empires or persons residing therein, of pecuniary or other obligations resulting from every act or contract done or entered into in French territory by every person prior to August 4, in the case of German subjects and prior to August 13 in case of Austro-Hungarian subjects. By a decree of November 7, 1915, the terms of the decree of September 27 were extended to apply to relations with the subjects of Bulgaria and persons residing therein.

Denial of the Right to Sue.—The above-mentioned prohibition in respect to contracts with enemy subjects, it was argued by the adversaries of the right to sue, applied not only to relations of a pecuniary or commercial character but also to civil contracts and relations such as are necessarily implied in judicial proceedings between Frenchmen and enemy subjects. It followed therefore that enemy subjects were prohibited from instituting or prosecuting actions in the courts of France. This was the view adopted by a number of French jurists[73] and by the French courts in several cases[74] one of the most reactionary decisions in which the right to sue was denied

[73] For example by Professor Valéry in the articles cited above; by M. Reulos, *Manuel des Séquestres*, p. 12, n. 1, and p. 214; by M. Courtois, in Clunet's *Journal*, T. 42, p. 509; by M. Troimaux, *Séquestres et Séquestrés*, pp. 163 ff., and by M. Théry in Clunet, T. 44, pp. 480 ff. Professor Valéry affirms that the judicial disability of enemy aliens was a rule of the Roman law and is equally the established doctrine of French public law. Rousseau's theory that war is a contest merely between armed forces, may, he says, have been true before 1914, but the refusal of the Germans to act in harmony with it destroyed whatever force it had acquired. He quotes Portalis and Leuder (Holtzendorff's *Handbuch*, IV, p. 358) in support of the view which he maintains. Valéry, however, appears to have admitted that an enemy subject might defend an action against him.

[74] Among the French courts which refused to admit enemy aliens to sue were the tribunal of Marseilles (June 22, 1915); the tribunal of Commerce of Marseilles (January 5, 1917); of Phillippeville (April 15, 1915) and the tribunal of the Seine (*référé*) May 18, 1916. Nevertheless sequestrators of enemy property could sue for the purpose of protecting the property in their custody. Actions by French creditors for the recovery of debts against sequestrated property could also be brought against the sequestrator, in which case the latter could defend the action.

was that of May 18, 1916, by President Monier of the Tribunal of the Seine (*référé*)[75] who interpreted the prohibition in the decree of September 27 in respect to *actes* and *contrats* with enemy subjects to embrace "judicial" acts such as are involved in retaining counsel and bringing actions in the courts.

Adverting to the contention that under Article 23(h) of the fourth Hague Convention of 1907 enemy subjects are entitled to sue in the courts of France, M. Monier asserted that "an international convention cannot prevail against a subsequently enacted municipal law which modifies its provisions and respect for which is rigorously imposed on every inhabitant of French territory,"[76] the "speculative theories of the law of nations" to the contrary notwithstanding. Furthermore, the above-mentioned provision of the Hague Convention was not binding on France because it had been violated by the German decree of August 7, 1914, which excluded French subjects from suing in the courts of Germany.[77] Not only this, but M. Monier added, the Germans had "cynically and deliberately violated all the rules imposed on belligerents by the various conventions of the Hague"; consequently the subjects of Germany were not entitled to the benefit of the law of nations in general and of the Hague Conventions in particular.[78] Every reason and consideration of law and fact, he concluded, was opposed to opening the courts to Germans; such liberty was in flagrant contradiction with the tendencies of opinion; it would lead in practice to serious inconveniences, possible collusions and fraud and even irreparable injury to the country.

[75] The case of *Wilmoth, Sequestrator* v. *Daude*, Text in Phily, *Jurisprudence Speciale et Législation de la Guerre*, Pt. III, pp. 225 ff., also in Clunet, T. 43, pp. 1303 ff.; see also the case of *Wilmoth, Sequestrator*, v. *Société Gén. Immobiliére*, December 21, 1915. Text in Reulos, pp. 355 ff.

[76] Professor Barthélemy (43 Clunet, 1484) remarks that this doctrine is "calculated to move the hearts of international publicists." M. Barthélemy properly adds that international conventions which have been ratified by France are binding upon all French judges.

[77] But as M. Barthélemy remarks the German prohibition applied only to French citizens domiciled *outside* the Empire and not at all to those resident therein. See also 42 Clunet, 567, and 43 Clunet, p. 1131, on this point.

[78] Compare on this point the more liberal views of Judge Cator, of the British prize court at Alexandria in the case of the *Gutenfels*, quoted above.

That enemy aliens had no *persona standi in judicio* was also the view of the council of the Order of Advocates of the Court of Paris [79] and of the Chamber of Solicitors (*Avoués*) of the tribunal of the Seine.[80]

[79] Resolution adopted November 30, 1915, Text in 43 Clunet, pp. 12 ff.

[80] Reulos, p. 215. One of the arguments advanced in support of the view that enemy aliens have no capacity to bring actions in the courts was that the employment of an attorney would involve the entering into contractual relations between the attorney and the enemy client, which was in effect forbidden by the decree of September 27. Compare Courtois and Valéry in 42 Clunet, pp. 511 and 1009. The resolution of the Council of the Order of Advocates referred to above declared that inasmuch as Germany had prohibited "all relations" with enemy subjects, it was the duty of the French bar to set an example of patriotism by refusing to take the cases of German suitors. No advocate of the Court of Paris, it was said, could advise or defend a subject of an enemy power, unless he had been authorized by the *batonnier* to do so, and this was the view of the tribunals of the Seine and of Marséilles in the cases referred to above. The contention that taking the case of an enemy client was a "contract" forbidden by the decree of September 27, was, however, vigorously attacked by Prof. Barthélemy (*L'Accés des Sujets Ennemis aux Tribunaux Français*, 43 Clunet, p. 1487) and by M. Clunet (*Concours professionnelle des advocats aux Sujets Ennemis et le Barreau de Paris*, 43 Clunet, pp. 14-18). Such an interpretation, says Barthélemy, is "purely literary, pharisaic, judaic, contrary to the intention of the legislature and in effect leads to the infliction of a sort of civil death upon enemy subjects by depriving them of their judicial personality." M. Clunet adds that enemy subjects have a right under international law and the municipal law of France to retain the services of members of the bar. He cites a number of cases in which the courts had upheld the right of enemy subjects to employ counsel and the right was affirmed by the fourth chamber of the Court of Appeal of Paris on April 20, 1916. The Court of Cassation (November 19, 1914) appears also to have admitted the right. President Monier of the tribunal of the Seine in the case referred to above, however, took occasion to say that "it was to the honor of the Paris solicitors that no one had claimed the right to defend a German" (43 Clunet, 1308). This tribunal, as well as those of Marseilles (44 Clunet, 241) and Besançon (*ibid.*, p. 248), held that the decree of September 27 prohibited all *juridical* as well as *commercial* relations with enemy subjects and that the latter could not therefore retain an attorney. A German writer, Dr. Haber, in the *Juristische Wochenschrift* of April 15, 1916 (Fr. trans. in 44 Clunet, 448 ff.) contrasting the German and French practice, remarks that if the decree of September 27 prohibited a German from hiring a French lawyer, it prohibited him from buying food or clothes from a Frenchman. M. Valéry (42 Clunet, 1009 ff.) suggested that one way out of the difficulty would be to allow enemy subjects to choose a curator *ad hoc* to represent them before the courts. The matter not having been determined by legislation it was left to the courts to deal with the question whenever it arose, each according to its own individual opinion.

The Right to Sue Defended by High French Authority.—The decision of the tribunal of the Seine and the doctrine of Valéry, Courtois, and others, that enemy subjects have no standing in the courts was vigorously attacked by a number of French jurists, among whom were Renault, Weiss, Clunet and Barthélemy. Professor Barthélemy in an able discussion of the question[81] asserts that the old doctrine enunciated by the *Parlement* of Douai in 1704 is not in accord with modern French law or practice. Modern French law, on the contrary, he says, is in favor of the right of enemy subjects to sue in the courts of France and in fact this right was recognized throughout the nineteenth century.[82]

The modern theory, he argues, is that war is a contest between the armed forces of states and not a struggle between peoples. Noncombatant subjects of the contesting powers are not at war with one another and, he adds, it is the duty of the French courts "to preserve in the midst of the present storm the small flame which still burns at the end of the taper of international law."[83] No argument, he says, can be drawn today from the principle of the civil code, which was hostile to the rights of foreigners; its doctrine is out of date, the principle of modern law being that enemy subjects must be treated as ordinary aliens are treated, subject to the precautions necessary to protect the state against injury. The state may prohibit its own nationals from entering into new juridical relations with enemy subjects and it may modify old rules whenever those relations would have the effect of increasing the resources or strength of the enemy, but to close the courts to enemy subjects and deny them the protection of the law is not justified by considerations of national defense. The purpose of judicial actions is merely to determine juridical situations; if the result of a suit in a particular case is a judgment in favor of an enemy subject and if the payment of the sum recovered would be prejudicial to the national interests, the govern-

[81] *L'Accès des Sujets Ennemis aux Tribunaux Français* in Clunet's *Journal*, T. 43, pp. 1473-1504.

[82] In support of this statement M. Barthélemy cites Merlin, *Répertoire, Sub Verbo, Guerre;* Massé, *Le Droit Commerciale*, Vol. I, p. 128 and Nys, *Le Droit Int.*, Vol. III, p. 69.

[83] *Ibid.*, p. 1480.

ment has only to suspend the execution of the judgment and thus protect the country against possible injury.[84] That is permissible but there is no sound reason for refusing to an enemy subject the privilege of having his legal rights adjudicated and determined by the courts. The power of the courts, he adds, to suspend or extinguish the legal rights of enemy subjects was forbidden by clause 23h of the fourth Hague Convention of 1907 to which France was a party, and while Germany had not strictly conformed her conduct to its provisions, she had not, as many Frenchmen seem to have assumed, closed her courts to French nationals residing in the German Empire but only to those domiciled *outside* German territory, and even these were allowed to sue with the permission of the Chancellor. Moreover the German courts were open for actions arising in connection with enemy branch houses and establishments, when the principal establishments were situated in Germany.

President Monier's contention that the prohibition laid down in clause 23h was not binding upon the French tribunals since it had been overridden by the terms of the decree of September 27 was extraordinary and unwarranted. The prohibitions of the decree of September 27 had not in fact modified the rule laid down in clause 23h nor had there been any intention so to do. That decree had reference only to *commercial* agreements or acts, and not to such relations as are involved in the bringing of judicial actions, including the employment of solicitors for the purpose of prosecuting a suit or defending an action. If the right of defense were allowed to an enemy subject who had committed a crime against a Frenchman, as it had in fact been done, and yet an innocent and unoffending German were denied the right to appear as a plaintiff against one who had committed a wrong against him, or to resort to the courts for the purpose of enforcing the terms of an unobjectionable contract, it would, as M. Barthélemy remarks, be a strange contradiction indeed. Finally, he pointed out that English practice was less rigorous than that followed

[84] M. Reulos (*Manuel des Séquestres*, p. 216) remarks, however, that the theory that an enemy alien shall be permitted to maintain an action in the court, but in case he obtains a favorable judgment, its execution may be suspended, rests on a subtle distinction and that in practice the right would be of no value to the enemy litigant.

by some of the French courts, for in England interned enemy subjects —and this included practically the whole enemy population—were allowed access to the courts both as plaintiffs and defendants.[85]

This liberal and enlightened view, highly creditable to the distinguished jurist who enunciated it, was adopted by M. Edouard Clunet, the learned editor of the *Journal du Droit International Privé*.[86] M. Clunet, like M. Barthélemy, attacked the old doctrine laid down by the *Parlement* of Douai as being contrary to the fundamental theory of modern law. He admits that the right of enemy subjects to sue might be abrogated by statute, yet it had never been done by France during any of the wars of the nineteenth century to which she was a party[87] and it was not the intention of the decree of September 27, 1914, to do so. Like M. Barthélemy, he holds that the right to sue was guaranteed by clause 23h of the Fourth Hague Convention of 1907, and without answering the question which he himself raises as to whether the French legislature could modify the rule embodied in the Hague Conference, he was firmly of the opinion that it had not in fact done so. Finally, he pointed out that no danger to the national interests would result from the opening of the courts to alien enemies, because the government was still free to suspend the execution of any judgment or the enforcement of any decision the execution or enforcement of which would be detrimental or dangerous to the country.[88]

The Right to Sue Affirmed by Some French Courts.—In a number of cases—in fact in the majority of those in which the question was raised—the French tribunals and courts upheld the right of

[85] The French courts, which closed their doors to German subjects sometimes, however, showed more consideration for enemy aliens of other races. Thus a Bulgarian who had a *permis de séjour* was allowed to bring an action (Trib. of Seine, March 13, 1917, 44 Clunet, 1481), and so was an Alsatian of French origin who was provided with a tricolor card (*ibid.*, T. 44, p. 1071).

[86] See his article entitled *Les Sujets Ennemis Devant les Tribunaux Français Jour. du Dr. Int.*, T. 43, pp. 1089-94.

[87] As authority on this point he quotes Massé *Le Droit Commerciale*, Vol. I, p. 128.

[88] For a German criticism of the French doctrine and practice, see an article by Dr. Karl Hirschland in the *Juristische Wochenschrift*, September 15, 1916. French text in 44 Clunet, pp. 87 ff. See also an article by Dr. Haber of Leipzig, in the same publication, April 15, 1916 (French trans. in 44 Clunet, pp. 448 ff.).

enemy subjects to sue both as plaintiffs and defendants.[89] The Council of Prizes also allowed enemy claimants to appear and defend their claims to ships and goods which were the object of prize proceedings. These decisions, so favorable to the rights of enemy aliens, however, provoked considerable criticism in France and the question was taken to the Court of Appeal of Paris, the 4th Chamber of which on April 20, 1916, rendered a notable decision upholding the right of enemy aliens to sue in the courts of France.[90] "This right," said the Court of Appeal, "must be considered to be one of the natural rights which foreigners enjoy in France, so long as there is no express provision to the contrary in the municipal law or international conventions." It was a right that had been secured to enemy aliens by Article 23(h) of the Fourth Hague Convention and it had not been abrogated by any law or decree of the French Government.

The decree of September 27, 1914, as every exceptional law which

[89] See especially the decision of the 10th Chamber of the Tribunal of the Seine in the case of *Gieb Cie. Gén. des Voitures*, January 9, 1915 (42 Clunet, pp. 62 ff. and 509 ff.); the decision of the same tribunal in the case of *Doyen, Orenstein and Kuppel* (43 Clunet, p. 974); and the decision of the Court of Appeal of Rouen, May 17, 1915 (*ibid.*, p. 1095); of the tribunal of Alger, July 22, 1915 (*ibid.*, p. 903); of the tribunal of Epinal, August 27, 1915 (*ibid.*, p. 262); of the tribunal of Nice, April 20, 1916 (*ibid.*, p. 1311); and the Court of Appeal of Aix, October 6, 1916 (44 Clunet, p. 717). The Court of Appeal of Alger in the important case of the *Vulcan Coal Company* decided on July 22, 1915, declared that "according to a principle of the law of nations, belligerent states alone are enemies, not the citizens thereof; consequently, the nationals of each such state have free access to the courts of the enemy country." (Text in Clunet, T. 42, pp. 903 ff.)

As to decisions affirming the right to sue, see the article of M. Clunet, *Les Sujets Ennemis*, etc., Clunet's *Journal*, T. 43, pp. 1089 ff., and the article of Barthélemy, cited above, 43 Clunet, pp. 147 ff.

[90] *Campagnie Bulgaria* v. *Olivier*. Text in Phily. *Jurisprudence Speciale*, Pt. III, pp. 749 ff.; 43 Clunet, pp. 380 ff., and Troimaux, pp. 186 ff. See also 43 Clunet, p. 1001. A history of this interesting case may be found in Troimaux, *Séquestres et Séquestrés*, pp. 163 ff. The case involved the right of an enemy insurance company to appeal from the decision of a tribunal to the *Cour d'Appel*. The *Avocat Général*, M. Godefroy, made a strong argument in favor of the right of enemy aliens to plead in the French courts, on grounds of justice and French precedents. There could be no danger, he contended, in allowing enemy subjects to exercise this right, for if they obtained a judgment the execution of which would in any way prejudice the national defense the government had the right to suspend execution.

introduces new principles, must, said the court, be strictly interpreted and in the light of existing laws and general principles. It was, as clearly appeared from the report on which it was based, designed to prohibit only *commercial* relations with the enemy and was not intended to interdict so-called civil agreements or acts. A distinction was made by the court between the *enjoyment* and the *exercise* of a right; an enemy alien might therefore be permitted to have his rights determined judicially even when, for reasons of public policy, he might be temporarily refused the benefit of the judgment recovered.[91] There were no considerations of public order or national defense why the legal rights of enemy subjects should not be determined by the courts even if it were deemed expedient to suspend during the war the enforcement of them. This decision was undoubtedly in harmony with the spirit of modern law and liberal practice and it was strongly approved by jurists like Renault, Weiss, Barthélemy and Clunet.[92] It was, however, the object of much criticism in and out of parliament[93] and a bill was promptly introduced in the Chamber of Deputies, the purpose of which was to overrule the decision. The bill passed the Chamber but it appears never to have received the approval of the Senate. The right of enemy subjects to sue therefore remained to be determined by the courts in each particular case as it arose. Some have followed one rule, some another.[94] As yet the Court of Cassation

[91] President Monier, of the Tribunal of the Seine, in his decision of May 18, 1916, referred to above, asserted that the distinction between the enjoyment and the exercise of a right and that the former might be preserved while the latter was suspended, was illogical. Such a distinction, he said, was not authorized but, on the contrary, was repudiated by the texts and rested on a confusion of ideas. Barthélemy and Clunet while supporting the right to sue nevertheless criticise the distinction (Clunet, T. 43, p. 1094).

[92] Clunet remarks that it was "irreproachable."

[93] See, for example, the criticism of Troimaux, *op. cit.*, pp. 171 ff., who pronounced it "detestable," contrary to French precedent and doctrine, in violation of the decree of September 27, and unjustified in view of German practice in respect to the right of French nationals to sue in German courts. See also Théry, *Recevabilité des Sujets Ennemis à Ester en Justice en France* (44 Clunet, pp. 480 ff.), who ridicules the proposition that the privilege of access to the courts is a "natural right."

[94] It appears that in some instances the courts hesitated to open their doors to enemy litigants for fear of exposing themselves to insults and attacks from the populace and the press. Others, embarrassed by the difficulty of reaching

has not passed on the question. It was unfortunate that the matter was never definitely settled by an Act of Parliament in the interest of certainty and uniformity of practice. It was a question of public policy which should have been dealt with by legislation and not left to the discretion of the courts with their conflicting opinions.

GERMAN, AUSTRIAN AND ITALIAN PRACTICE

The German Ordinance of August 7, 1914.—By an ordinance of the *Bundesrath* of August 7, 1914, issued in pursuance of authority granted by an act of the German parliament of August 4, the right of all persons who had their domicile (*wohnsitz*) abroad,[95] and all corporations (*juristische personen*) which had their seat in foreign countries to maintain actions in the German courts for the recovery of debts or either patrimonial claims (*Vermogensrechtlichen ansprüche*) occurring before July 31, 1914, was suspended until October 31, 1914. Actions instituted prior to the taking effect of the ordinance were likewise suspended until the latter date. The Chancellor was, however, authorized to make exceptions in individual cases to the rule thus laid down, but it is not probable that any exemptions were ever granted to enemy aliens. He was also authorized to extend the application of the provisions of the ordinance to branch establishments of enemy nationality—without regard to their domicile or situs.[96] The

a decision because of the vagueness of the decree of September 27, refrained from pronouncing judgments, this notwithstanding the fact that Article 4 of the code civil enacts that "the judge who refuses to decide a case under the pretext of silence, obscurity or insufficiency of the law shall be prosecuted for denial of justice." In still other cases the judges suspended decision pending the action of parliament.

[95] Presumably without destinction as to whether they were domiciled in neutral or enemy territory. But by an ordinance of June 25, 1915, persons domiciled in Switzerland, if not enemy subjects, were allowed to sue in the German courts. 43 Clunet, p. 1166.

[96] Text of the ordinance in *Die Kriegsnotgesetze für das Reich und Preussen*, Bd. I, S. 64; French translation of the text in Reulos, *Manuel des Séquestres*, p. 478. See also an analysis in the London *Solicitors Journal* of November 7, 1914.

By a German ordinance of December 2, 1916, enemy subjects, companies and associations domiciled in enemy country were prohibited from bringing suits in Belgian courts for the enforcement of pecuniary claims. *Int. Law Notes*, January, 1917, p. 15.

duration of the decree appears to have been extended from time to time, so that whereas it was ostensibly intended at first to be only a temporary measure it was in fact made permanent.

Its Weight and Effect.—It will be seen from an examination of the ordinance that the test of enemy character, so far as judicial capacity was concerned, was domicile rather than nationality. Under the terms of the ordinance enemy subjects domiciled or resident in the Empire were free to maintain actions in the German courts without restriction, both as plaintiffs and defendants, and apparently without regard to whether the litigant was interned in a concentration camp or not. The same liberty was accorded to the local branches of houses whose main establishments were situated in foreign countries. Even as to enemy subjects domiciled abroad the right to maintain actions in respect to property rights accruing after July 31, 1914, remained in effect. Likewise actions other than those for the recovery of debts and the enforcement of property rights, such as those relating to civil status, guardianship, etc., could be maintained by enemy subjects residing outside the Empire.[97] Finally, enemy subjects even when residing in enemy territory were allowed the right of defense in actions brought against them in the German courts.

In theory, therefore, apparently the only persons to whom the German courts were closed were those domiciled *outside* the Empire and establishments whose head offices were situated in foreign countries. Local branch houses were free to maintain actions, as were persons domiciled in the Empire. It would seem therefore that the impression which appears to have gained currency in France that Frenchmen residing in Germany had no *persona standi in judicio* was without foundation.[98] There is little available information now as to the

[97] Huberich remarks that non-residents were exposed to one practical difficulty in maintaining actions in the German courts, in that they were required to give security for costs and no appearance could be entered without a written power of attorney. Ignorance of this rule caused many defendants resident in England and who were cited by substitute service but who failed to appear, to be judged by default and execution levied on their property. Note in the *Jour. of the Soc. of Comp. Leg.*, January, 1915, p. 54.

[98] This was pointed out by Barthélemy and Clunet in the articles cited above. Compare also Huberich "German Emergency Legislation Affecting Commercial

manner in which the German ordinance was carried out, but French writers admit that instances are not lacking in which Frenchmen were allowed to maintain actions and appear as defendants.[99] Nevertheless, the practical difficulties encountered in exercising the privilege granted appear to have been insurmountable in many cases.[100]

The *Reichsgericht* rendered a decision on July 8, 1915, in which it upheld the right of English subjects domiciled in the Empire to sue in the German courts for the recovery of money due them on contracts, notwithstanding the English prohibition in respect to payments due German subjects.[101] German writers in fact assert that no restrictions were placed upon the right of enemy subjects domiciled in the Empire to bring actions in the courts, that no question was ever raised as to the right of German attorneys to take the cases of such persons and that there were no instances in which members of the German bar refused to defend enemy persons against whom suits were instituted.[102]

Austrian Policy.—The Austrian Government appears to have pursued a liberal policy. By an ordinance of October 7, 1915, enemy enterprises were allowed to bring actions with the consent of the

Matters," in *Law Notes* for June, 1915, p. 48, and the *Jour. of the Soc. of Comp. Leg.*, January, 1915, p. 55, which thus described German policy:

"Suffice it to say that the emergency provisions, taken as a whole, are creditable to Germany and its jurisprudence. They exhibit no spirit of vindictiveness. If there is retaliation, it is only resorted to where the rights conceded by Germany are refused by us. The disabilities and prohibitions, in a word, are no more that the reasonable safeguards which a belligerent may exact in the presence of that hideous anomaly—War."

[99] See Barthélemy in 43 Clunet, p. 1446, and Clunet, *ibid.*, T. 42, p. 567, and T. 43, p. 1131. See also an article by Dr. Arthur Curti, a Swiss jurist, entitled *De la Condition des Sujets Ennemis Selon la Législation et la Jurisprudence Allemandes*, 42 Clunet, pp. 785 ff.

[100] G. F. in an article entitled *Accés des Sujets Ennemis aux Tribunaux Allemands*, in 44 Clunet, pp. 48 ff., calls attention to various other difficulties which made recourse to the German courts by enemy subjects, either as plaintiffs or defendants, even where the right was accorded by law, a practical impossibility.

[101] Soergel, *Kriegsrechtsprechung und Kriegsrechtlehre*, pp. 99, 111.

[102] See an article dealing with the right of enemy aliens to sue in German courts and to employ attorneys, by Dr. Haber, of Leipzig, in the *Juristische Wochenschrift* of April 15, 1916, reprinted in French in 44 Clunet's *Journal*, pp. 448 ff.

surveillant. In the case of *Attenbach* v. *Kornfeld*, a French haberdasher of Vienna, who returned to France at the outbreak of the war, was allowed to hire an attorney and bring an action against an Austrian for the recovery of a debt incurred before the war. The State was interested, said the court, in seeing that Austrian debtors performed the stipulations of their contracts with enemy houses. Judgment was decreed in favor of the Frenchman although the amount decreed was placed in the hands of the surveillant to be held by him until the end of the war.[103]

Italian Policy.—By a decree of June 24, 1915, the Italian Government prohibited the bringing of suits in the Courts of Italy by persons of Austrian or Hungarian nationality or persons resident in Austria or Hungary. All pending suits were suspended during the duration of the war and the statutes of limitation were likewise suspended. By a decree of July 18, 1916, the provisions of the abovementioned decree were extended to all persons who were the subjects of any state at war with Italy, to all persons resident in such a state and to all persons who were subjects of or resident in the territory of the ally of an enemy.[104]

JAMES W. GARNER.

[103] Communication by Professor Basdevant of Grenoble, in 44 Clunet, pp. 114 ff.

[104] Huberich, Trading with the Enemy, p. 12.

PRIVATE PROPERTY ON THE HIGH SEAS

War, therefore, is an act of violence intended to compel our opponent to fulfil our will.

. . . . . .

If our opponent is to be made to comply with our will, we must place him in a situation which is more oppressive to him than the sacrifice which we demand.

. . . . . .

As long as the enemy is not defeated he may defeat me; then I shall be no longer my own master; he will dictate the law to me as I did to him.—Clausewitz on War.

INTRODUCTION

The impulses of a people are, as a rule, the result of intuition rather than of reason, and at a very early period of the recent war the German people adopted as a national creed that they were at war with Anglo-Saxonism, with the Anglo-Saxon civilization as the opponent and enemy of German Kultur. They have made many mistakes, most of them the fruit of this self-same Kultur, but in this matter instinct, intuition, or impulse, whichever it may be, has proved a truer guide than the learning of their professors or the pronouncements of their statesmen. They are right. This was a war of two distinct and opposing civilizations, of two different mentalities—the mechanism of the Anglo-Saxon mind differs from the mechanism of the German mind, it differs indeed from the mechanism of the Continental mind.

For an Anglo-Saxon, in so far as he reasons at all, reasons inductively. He begins with a fact, whilst the Continental, as a rule, reasons deductively, that is, from a principle or a maxim.

The Anglo-Saxon loves a compromise, which is never logical, and distrusts logical conclusions. For his whole history has been a history of compromises between opposing claims advanced and supported by opposing factions.

If the major premise be admitted, the iniquities of the Inquisition were the truest mercy, and if we are to accept the test so often pro-

posed by Continental reasoners—"of two things one"—then it is possible to justify not merely the *auto da fé*, but every form of judicial torture and every extreme exercise of the Divine right either of Kings or Majorities.

It is the saving virtue due to a distrust of the obviously logical conclusion, and unshakable belief in the *via media*, and the possibility of compromise, that lie not merely at the root of all Anglo-Saxon legislation but inspire all Anglo-Saxon policy, and are the secret of its success.

There is nothing more illogical than the British Empire. It is neither British nor an Empire. No word can be found in the dictionary of any language which describes the ramshackle collection of governments and nationalities which, for want of a better phrase, we call the British Empire. It is a medley, illogical and unsymmetrical: but it works. It has worked with wonderful efficiency for four years, and in its working has staggered and upset the logic of all the learned men of all the learned bodies; and the policies of all the politicians who, arguing from the principles laid down by constitutional publicists, prophesied disruption at the sound of the first gun fired in anger.

This conflict of mentalities is not a new development, it has existed throughout all history. And in judging the record of our race in the matter of their interpretation and administration of the Laws of War at Sea we must not look for a logical appeal to principles, but for a compromise between opposing rights. It is this constant effort to find the *via media* between conflicting claims or rights that is the secret of the British Empire. The Anglo-Saxon recognizes that a right may be pushed so far as to become a wrong—and the failure to secure an acceptable compromise—which provoked the American Revolution, is the exception which proves the rule, that the British Empire—British legislation—and British policy are based on successful compromise. This system of compromise is the fruit of experience and of experiment, of mistakes fruitful of instruction, and successfully corrected because equitably remedied though solved illogically.

So much by way of introduction or caution. For it is not the purpose of this paper to expound a logical system of the Laws of War at

Sea. Nor is it proposed to enunciate any legal principle derived from the maxims of Continental Codes. All war is illogical. It is brutal, a brutal appeal to strength. It is an act of violence which though it may originate in the noblest motives can never be anything but cruel, and must inevitably inflict suffering on innocent persons.

But until some means can be devised for averting war it is necessary to recognize that wars must come, and to define and limit the rights that are created by a state of war. The best guide in this matter will be found in the teaching of history. For although nations have asserted as neutrals, rights which they have subsequently repudiated as belligerents, and *vice versa,* nevertheless, this very conflict of claims may be of service in finding the equitable compromise that we seek. In International Law as in Municipal Law and policy, experience is a safer guide than theory or maxims, or phrases masquerading as principles.

CAPTURE AT SEA

In the consideration of the question of Capture at Sea, we at once find ourselves in the presence of two claims which are frequently in conflict. Phillimore (Vol. III, p. 450) says, "All property belonging to the enemy found afloat upon the high seas and all property so afloat of subjects or neutrals conducting themselves as belligerents may be lawfully captured."

On the other hand the same author says, p. 238, Vol. III, "There is no more unquestionable proposition of International Law than the proposition that neutrals are entitled to carry on upon their own account a trade with a belligerent."

What is the justification for these claims?

It has been urged that the danger involved to private property tends to deter nations from war. But this thesis cannot be supported by any evidence derived from history, and it is only mentioned here to be put aside as untenable. Similarly the capture of enemy property as a means of enriching a belligerent is also put aside as no longer tenable. It may have been a motive influencing belligerents in times past. It may even be a motive influencing them today. It certainly influenced privateersmen. But it is not a motive that is

avowable or that can be adduced in support of the undoubted belligerent right.

The true and only justification of the right of capture is that all war is a struggle for life or death between nations, and that the sinews of war are provided by property. If a belligerent deprives his enemy of his property, he prevents him from fighting as effectively as he otherwise would, and so saves himself from being overcome, whilst he increases his own chances of overcoming his enemy. The seizure of enemy property is a weapon of war, and can only be justified as a weapon of war.

But when we come to neutral rights we find ourselves in presence of claims which conflict with belligerent rights, and it is here that we find a fruitful source of controversy. Grotius says, "*Verum est dictum . . . in hostium esse partibus qui ad bellum necessaria hosti administrat.*" No one disputes that if two persons or two nations are fighting, each combatant has the right to prevent his enemy from receiving arms or succor or support from third persons who call themselves neutral. The neutral right to trade is not disputed. But the controversy has constantly raged, and for the matter of that, still rages on the extent or limitation of the right to intercept or capture supplies sent in the exercise of this neutral right by private persons. It is not possible to do more than review very briefly the law and controversies on this subject, but it must always be remembered that the existence of the right of capture is not disputed. The controversies have always turned on two points: (1) The restriction or limitation of an admitted right or (2) The proposal to abolish that right altogether.

The oldest code of law still surviving is the *Consulat de la Mer* or *Consolato del Mare* which dates from the fourteenth century. Like most successful laws it was a codification of customs or practices which had grown up by common consent and not a system deduced from legal maxims for principles. The following are the rules of the *Consolato del Mare:*

1. Enemy goods on the ship of a friend are good prize.
2. In such a case the captain of the neutral ship should be paid freight for his cargo so confiscated, as if he had taken it to its primitive destination.

3. The property of a friend on an enemy vessel is free.
4. That the captors who have seized an enemy vessel and brought it into one of their ports should be paid freight on the neutral merchandise as if it had been carried to its primitive destination.

The above rules were framed when the motive of plunder was more prominent in respect to enemy property than it is today. There is a clear distinction between neutral and belligerent property, but the principle running through the rules is that a belligerent may confiscate his enemy's property, but must respect neutral property and neutral rights.

The aspect of trade or commerce as a means of succor and support of an enemy is not apparent as a governing motive, and indeed the war material of the fourteenth century was so restricted that the question of contraband in the modern sense must have been a minor matter. All men were armed or possessed arms of some sort, and the arms were such as could be carried on the person. The *Consolato del Mare* was the code of Europe up to the sixteenth century.

By ordinances of 1543 and 1584 the French Government declared that the property of a friend in an enemy's ship, and also the ship of a friend having the property of an enemy on board were lawful prize. It is doubtful if these ordinances were ever acted on. Sir Leoline Jenkins thought not: but in the seventeenth century divergence from the code of the *Consolato del Mare* became common. By the Treaty of Westminster of 1654 money and provisions as well as war material were declared contraband by agreement between England and Holland.

In 1681 the famous *ordonnance de la marine,* drawn up by Colbert in the name of Louis XIV of France was published. Article VII of that *ordonnance, Titre des Prises,* reads as follows:

Tous navires qui se trouveront chargés d'effets appartenans à nos ennemis, et les marchandises de nos sujets ou alliés qui se trouveront dans un navire ennemi, seront pareillement de bonne prise.

On this the commentator makes the remarks:

D'effets appartenans à nos ennemis. La même chose étoit défendue chez les romains. L Mercatores au cod de commerciis et mercatoribus.

Dans un Navire ennemi, car il n'est pas permis de freter un vaisseau ennemi et les marchandises et effets quoi qu' appartenans aux Sujets du Roi ou à ses alliez, ne seroient pas moins de bonne prise que le navire ennemi; cet Art. a été confirmé par un arrêt du conseil du 26 Octobre 1692, et par un autre du 23 Juillet 1704.

The ordonnance of 1704 decreed:

S'il se trouve sur les vaisseaux neutres des effets appartenans aux ennemis de Sa Majesté les vaisseaux et tout le chargement seront de bonne prise.

Here was a gross violation of neutral rights. A flagrant departure from the public law of Europe and from the custom and practice of centuries. That it could be supported by some forgotten rule of Roman Law or by the maxim "*que la robe ennemi confisque la marchandise et la vaisseau ami*" was no justification for a departure from accepted International Law. But the late sixteenth and early part of the seventeenth centuries were the period of the expansion of commerce. The treaties begin to bristle with commercial stipulations and nations were becoming more and more interdependent. Whilst we may allow full weight to the sordid motives of the privateersmen there was certainly another factor governing the Law of Capture at Sea. The war of exhaustion had become an international weapon. Commerce sustained the strength of a nation, the deprivation of commerce weakened and exhausted a nation.

In the War of the Spanish Succession the exhaustion of France was the governing influence that induced Louis XIV to sign what to him must have been the humiliating Treaty of Utrecht. England was not exhausted, and owed her vigorous vitality to sea power. Yet the 17th Article of the Commercial Treaty of Utrecht between England and France stipulated for free ships, free goods except contraband of war and was a distinct repudiation of the French Law. This article was a British article. Why? Because the Power that has the mastery of the sea has no need for *la guerre des courses*, or for privateering. Moreover, the British maritime supremacy was not limited to vessels of war, but included a growing mercantile marine. Privateering is always the resource of the weaker naval power. But the weapon of an effective or virtual blockade, amounting to an interruption or

prohibition of commerce, is a serious military weapon. The exploits of the Alabama and her consorts in no way influenced the Civil War in America, but the blockade of the southern coasts exhausted the Confederacy. It was as much a factor in the decision of the war as the victories of General Grant.

This is the prominent fact that has influenced the history of Europe from the date of the battle of La Hogue in 1692 to the present day. Sea power is telling every day, and the exploits of the submarine could not and did not, as the Germans expected, decide the war.

The 17th Article of the Commercial Treaty of Utrecht was an attempt to readjust the balance between neutral rights and belligerent claims. It was a departure from the principles of the Roman Law and the clear cut distinctions of the *Consolato del Mare;* but it was a special contract with France and was not of universal application. It was not the law, but was an exception to the law.

The French Regulation of October 21, 1744, is too long for quotation, but it gave neutral vessels sailing from their own ports the right to carry the goods of their own country to an enemy port, except contraband of war. It also gave neutral ships the right to sail from an enemy port with goods loaded on account of neutral sovereigns for a port of their own sovereign. But otherwise enemy goods on neutral ships were good prize.

On January 18, 1753, the law officers of the British Crown submitted a memorandum of the law in the matter of prize. This memorandum is an annexure to the well-known despatch of the Duke of Newcastle in the matter of the Silesian loan, and is too long for quotation in full. But the following extract gives the pith of the statement:

> First as to the Law.
>
> When two Powers are at war, they have a right to make prizes of the ships, goods, and effects of each other upon the High Seas. Whatever is the property of the Enemy may be acquired by capture at sea; but the Property of a Friend cannot be taken provided he observes neutrality. Hence the Law of Nations has established:
>
> That the goods of an Enemy on board the ship of a Friend may be taken.

That the lawful goods of a Friend on Board the ship of an Enemy ought to be restored.

That contraband goods going to the enemy tho' the Property of a Friend may be taken as Prize; because supplying the enemy with what enables him better to carry on the War is a departure from Neutrality.

This is substantially the *Consolato del Mare* plus the confiscation of contraband. The law officers were not legislating, they were stating the law, and the law had come to recognize a new factor in war, and a new distinction in the right of a belligerent. The right of plunder, of confiscating enemy property was still present in the law. But a new and competitive motive or justification for belligerent rights appeared.

The law of capture at sea was gradually taking the direction that the right of the belligerent was to intercept succors or aids sent to his enemy, a much nobler and more justifiable right than the right to plunder. The two rights stand concurrently in the law, but it is evident that as between belligerents the path of progress, if motive is to weigh, lies in the replacement of the right to plunder by the right to intercept or control succor. Provided always that full consideration is given to the rights of neutrals.

On February 1, 1793, the French Convention declared war on England, and the British Government at once entered into a series of treaties prohibiting the export to France of naval and military stores or provisions. The signatories to those treaties included Russia, Spain, Naples, Prussia, Austria and Portugal. In fact all Europe except Sweden and Denmark. Here we find the right of control of commerce, as distinct from the right of plunder of commerce, coming into prominence.

PREEMPTION

And this new right or claim was emphasized when both France and England preempted the cargoes of ships laden with corn, flour or meat.

England's action gave ground for controversy. For although the Treaty of 1691 between England and Sweden made money, provisions, and horses, with furniture necessary for horses, contraband, Sweden,

Denmark and the United States protested. The British Government held that by modern law provisions are contraband whenever the depriving of an enemy of these supplies is one of the means of reducing him to terms. Here, in this argument, we are getting on more legitimate ground than the old motive of plunder. We are leaving the claim to use war as legalized brigandage and taking our stand on the right of a belligerent to prevent aid or succor in any shape from reaching his enemy—a much more respectable position, to say the least of it. The argument in the case of England was supported by the fact that the French Government had armed almost the whole French nation—and had established a virtual monopoly of the corn trade, but this was merely an extension of the principle laid down by the British Court of Admiralty, and in so far as it was a valid justification, its effect was to limit the use of the weapon of interception, or control of commerce, to nations where conscription or government control of food was in force.

On the British side it could be contended that it was not an invidious rule, but the revival of a practice recognized in many treaties of the seventeenth century. But, as we have seen, the United States objected. Jefferson wrote: "Such a stoppage to an unblockaded port would be so unequivocal an infringement of neutral rights, that we cannot conceive it will be attempted." As the law stood Jefferson had a strong case. For in the absence of express treaty stipulations the law, as stated by the law officers in 1753, was good law and we may put aside for the moment the argument derived from the general mobilization of the French nation, for as we have seen this is a limiting argument, and look frankly at the conflict of claims.

There are no two nations which have a greater respect for the rights of property and the liberty of the subject than America and Great Britain. But there are also no more practical nations than those which form the two great branches of the Anglo-Saxon race, and they are quick to recognize that conditions may change in such a manner that the logical exercise of a right is out of date, and that rights which grew up under different conditions, call for a new interpretation suited to the changes brought about by human progress. Slavery was once a legal right in America—it has ceased to be so. The protection

of property and the liberty of the individual are guaranteed by the 5th amendment to the American Constitution, but the American Statute Book contains laws intended to limit such rights—in such a manner that the right of one party shall not be another's wrong. Here then we were in presence of two conflicting claims. On the one side we had a claim to use sea power not for purposes of plunder—but as a weapon of war for the purpose of bringing the enemy to terms. Sea power was to be used to intercept supplies and control commerce—but not to plunder commerce. On the other side was an appeal to a legal right which had been long established.

The matter was very properly referred to negotiation and compromise, and the negotiations resulted in the famous Jay Treaty of 1794. The 18th Article of that treaty reads as follows:

> In order to regulate what is in future to be deemed contraband of war, it is agreed that under the said denomination shall be comprised all arms and implements serving for the purposes of war, by land or by sea, such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket rests, bandoliers, gunpowder, match, saltpetre, ball, pikes, swords, head pieces, cuirasses, halberts, lances, javelins, horse furniture, holsters, belts, and generally all other implements of war, as also timber for ship building, tar or rozin, copper in sheets, sails, hemp and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are hereby declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.
>
> And whereas the difficulty of agreeing on the precise cases in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings which might thence arise: It is further agreed that whenever any such articles so becoming contraband, according to the existing laws of nations, shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or, in their default, the Government under whose authority they act, shall pay to the masters or owners of such vessel the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention.

This treaty was concluded by George Washington, John Jay, William Pitt, and Lord Grenville.

In 1803 a treaty was concluded between Great Britain and Sweden. The following is the Second Article of that Treaty:

Les croiseurs de la Puissance bélligerante exerceront le droit de detenir les batimens de la Puissance neutre allant aux ports de l'ennemi avec des chargemens de provisions ou de poix, résine, goudron, chanvre, et généralement tous les articles non manufacturés, servant à l'équipement des bâtimens de toutes dimensions, et également tous les articles manufacturés servant à l'équipement des bâtimens marchands (le hareng, fer en barres, acier, cuivre rouge, laiton, fil de laiton, planches, et madriers, hors ceux de chêne et esparres, pourtant exceptés); et si les chargemens, ainsi exportés par les bâtimens de la Puissance, neutre, sont du produit du territoire de cette Puissance, et allant pour compte de ses sujets, la Puissance belligérante exercera dans ce cas le droit d'achat sous la condition de payer un benefice de dix pour cent sur le prix de la facture de chargement fidélement déclaré, ou du vrai taux du marché soit en Suede soit en Angleterre, au choix du propriétaire, et en outre une indemnité pour la détention et les dépenses nécessaires.

Here then we find the system of preemption defined, and legalized. Manning (Law of Nations), after referring to the older treaties of the seventeenth century, says:

In this country, although some of the treaties [*i.e.* seventeenth century treaties] above quoted show that our government formerly recognized the right of Pre-emption in its most comprehensive scope, yet such exercise of the right has, with us, long fallen into disuse. Pre-emption is confined in our practice to those instances where goods are of that description that their transport to our enemy would be manifestly to our disadvantage, while, on the other hand the law of Contraband does justify their confiscation. "Pre-emption," said Sir William Scott, "is no unfair compromise, as it should seem, between the belligerents' rights, and the claims of the neutral to export his native commodities, though immediately subservient to the purposes of hostility."

In the case of the *Haabet*,[1] Lord Stowell (Sir William Scott) said:

The right of taking possession of cargoes of this description, *Commeatus or Provisions*, going to the enemy's ports, is no peculiar claim of this country; it belongs generally to belligerent nations. The ancient practice of Europe, or at least of several maritime States of Europe, was to confiscate them entirely; a century has not elapsed since this claim has been asserted by some of them. A more mitigated

[1] *The Haabet (No. 1)*, 2 C. Rob. 174; 1 Roscoe's Prize Cases, 212. See p. 214.

practice has prevailed in later times of holding such cargoes subject only to a right of pre-emption, that is, to a right of purchase upon a reasonable compensation, to the individual whose property is thus diverted.

The reasoning of Manning and of Lord Stowell seems unanswerable and is a confirmation of the wisdom and justice of the Jay Treaty and the Swedish Treaty.

But since the great Revolutionary and Napoleonic wars many things have happened. Conscription has become universal in Europe. Even in times of peace. For years Europe has been in presence of the "Nation in Arms": nor has the organization for war stopped at the military forces. The railways—the means of production and distribution of all commodities—have been so arranged as to pass under what is virtually government control immediately on the outbreak of war.

Contemporaneously with the changes in organization there have been changes in the material of war. Science has not been idle, and the best brains in Europe and America have been applied to utilizing all the resources of chemistry—or metallurgy—as well as all the forces of nature for the purposes of war. The list of articles that have a double use now includes almost every product either in a raw or manufactured state. It is almost impossible to say what is not or may not become conditional contraband. Raw cotton, india-rubber, motor-cars, steam yachts—all mineral or vegetable products may have a military use. In fact everything may be, and probably is, conditional contraband. *Sive instrumenta bellica sint, sive materia per se bello apta* (Bynkershoek). It was in the presence of this difficulty that the Foreign Office addressed the following instruction to Sir Edward Fry, the British representative at the Second Hague Conference. The paragraph is given in full.

With regard to contraband, many most difficult questions arose during the late war. These cases were sufficient to show that the rules with regard to contraband that were developed at the end of the eighteenth and the beginning of the nineteenth centuries are no longer satisfactory for the changed conditions under which commerce and war are now carried on. His Majesty's government recognize to the full the desirability of freeing neutral commerce to

the utmost extent possible from interference by belligerent Powers, and they are ready and willing for their part, in lieu of endeavoring to frame new and more satisfactory rules for the prevention of contraband trade in the future, to abandon the principle of contraband of war altogether, thus allowing the oversea trade in neutral vessels between belligerents on the one hand and neutrals on the other to continue during war without any restriction, subject only to its exclusion by blockade from an enemy's port. They are convinced that not only the interest of Great Britain, but the common interest of all nations will be found, on an unbiassed examination of the subject, to be served by the adoption of the course suggested.

Even Homer nods, and the British Foreign Office which on the whole deserves the gratitude of mankind for its constant efforts to limit the hardships and the horrors and injustice of war, showed less than its usual clear vision in this paragraph.

It was proposed to abolish contraband because practically everything had become contraband. A strange and insufficient reason.

It was proposed to substitute blockade with all the penalties incidental thereto, for the more merciful system approved in the Jay Treaty and by Lord Stowell, that is to say, it proposed to substitute the confiscation of commerce for the control of commerce.

And it was proposed to rely on blockade when blockade in the legal sense had become impossible or would shortly be rendered impossible by the submarine.

But there is some excuse for this defect of vision. The present writer happened about that date, *i.e.*, 1907, to discuss the naval position with a captain in the German Navy who has achieved distinction as an authority on naval subjects. To the remark that the submarine was a new weapon which would change naval war, the German captain replied:

I don't believe it. The submarine is dangerous to its crew, look at the accidents that have taken place—if anything goes wrong, and things must always go wrong sometimes, everyone is drowned or suffocated. No, I have no faith in submarines, what we want is more battleships and bigger battleships. For our present ships are too small. We want bigger guns and bigger ships if we are to face your Fleet.

It is right to add that at the outbreak of the present war the Germans actually possessed a smaller fleet of submarines than the British.

If then the German Admiralty which foresees everything and prepares everything did not foresee the potentialities of the submarine, or the barbarous use they intended to make of the new weapon, the British Foreign Office may be excused for not having been gifted with a greater foresight as to the influence of submarines on blockade.

Fortunately the British proposal was not accepted by the Conference.

THE FREEDOM OF THE SEAS

It will be convenient at this stage to consider another proposal which has been made; namely, the immunity of private property at sea, except contraband of war. For purely controversial purposes it might be sufficient to say that as everything is now contraband of war the proposal is inapplicable; but such a reply would be wanting both in courtesy and honesty. For the advocates of the proposal have certainly intended a great restriction of the list of contraband. The proposal has been made by four American Presidents and by writers such as Bluntschli, Pierantoni, De Martens, Bernard, Massé, de Lavelaye, Nys, Calvo, Maine, Hall, Woolsey, Field, Amos, etc. By English statesmen such as Brougham, Palmerston, Cobden, and Loreburn, as well as by Mill. It must therefore be examined as a proposal that comes before the world supported by the very highest authority.

The first criticism is that sea power always has been, is now, and always will be the power of the mercantile nation, as distinct from the military nation. It is possible that the trident may pass from the hands of England to the hands of America, many persons believe it will. Shipping and sea power go together, both require wealth to support them. But even so, it will only pass from the hands of one mercantile nation to the hands of another mercantile nation. To take the points from the trident is therefore to weaken the power of the mercantile nation in favor of the military nation. Is this desirable? The writer thinks not. The mercantile nation lives by peace and seeks peace. The military nation prepares for war, and regards war as a phase of policy—that is as a more active development of foreign policy than that pursued by the peaceful methods of diplomatists en-

gaged in the game of chicane or of intrigue or coercion of neighboring or rival states.

The matter was carefully considered by the British Government in 1907, and their view is expressed in the instructions addressed to Sir Edward Fry by Sir Edward Grey. The following is an extract from those instructions:

> It is probable that a proposal will be brought before The Hague Conference to sanction the principle of the immunity of enemies' merchant ships and private property from capture at sea in time of war. His Majesty's Government have given careful consideration to this question, and the arguments on both sides have been fully set out in the various papers which have been at your disposal. They cannot disregard the weighty arguments which have been put forward in favor of immunity. Anything which restrains acts of war is in itself a step towards the abolition of all war, and by diminishing the apprehension of the evils which war would cause, removes one incentive to expenditure upon armaments. It is also possible to imagine cases in which the interests of Great Britain might benefit by the adoption of this principle of immunity from capture.
>
> . . . . . .
>
> The British Navy is the only offensive weapon which Great Britain has against Continental Powers.
>
> . . . . . .
>
> For her ability to bring pressure to bear upon her enemies in war Great Britain has therefore to rely on her Navy alone. His Majesty's Government cannot therefore authorize you to agree to any Resolution which would diminish the effective means which the Navy has of bringing pressure to bear upon an enemy.

In the recent war England and America, the two mercantile, and nonmilitary nations, had large armies fighting on the Continent of Europe: but those armies had been transported and existed in virtue of sea power. The German armies opposed to them felt the pressure of sea power. The difficulties of the German soldier in regard to ammunition, transport and food, were the creation of sea power. If there was a shortage of copper for cartridges, of glycerine and cotton for explosives, of materials for poisonous gas, the shortage was caused by sea power.

Facts are stubborn things, and the facts of the recent war justify those men who clung to the belief in sea power as a weapon of war and believed that the same conditions that created that power would

prevent its misuse. The illustrious men who have from time to time advocated the immunity of private property at sea carry weight—deservedly so: but their lives were devoted to the study of the principles of law and politics rather than to the hard facts of war. It is right therefore to cite the opinion of a student of war, and no name stands higher in that branch of historical research and military and economic science than that of the late Admiral Mahan. In his Essay on the Possibilities of an Anglo-American Reunion he wrote as follows:

> In the same way it may be asserted quite confidently that the concession of immunity to what is unthinkingly called the private property of an enemy on the sea will never be conceded by a nation or alliance confident in its own sea power. It has been the dream of the weaker sea belligerents in all ages; and their arguments for it, at the first glance plausible, are very proper to urge from their point of view. That arch robber, the first Napoleon, who so remorselessly and exhaustively carried the principle of war sustaining war to its utmost logical sequence, and even in peace scrupled not to quarter his armies on subject countries, maintaining them on what after all was private property of foreigners, even he waxes quite eloquent and superficially most convincing as he compares the seizure of goods at sea, so fatal to his Empire, to the seizure of a wagon travelling on a country road.
>
> . . . . . .
>
> Now private property borne upon the seas is engaged in promoting, in the most vital manner, the strength and resources of the nation by which it is handled. When that nation becomes belligerent the private property, so called, borne upon the seas is sustaining the well-being and endurance of the nation at war and consequently is injuring the opponent to an extent exceeding all other sources of national power.
>
> . . . . . .
>
> Blockade, such as that enforced by the United States Navy during the Civil War, is evidently only a special phase of commerce destroying; yet how immense—nay decisive—its results!
>
> It is only when effort is frittered away in the feeble dissemination of the *guerre de course* instead of being concentrated in a great combination to control the sea that commerce destroying justly incurs the reproach of misdirected effort.

How do these words, written in 1894, read today? Napoleon no longer lives—but does the Power that clamors for the freedom of the

seas respect private property on land? Is the control of commerce by the use of sea power an effective weapon, or is it not? Is the *guerre de course* any more worthy of respect than it was when Admiral Mahan correctly characterized it?

We see, therefore, that sea power is an effective weapon in war, and that whilst the old right of a belligerent to weaken and exhaust his enemy is as legitimate as ever, the manner of the exercise of that right calls for modification. Everything that man produces can be utilized by science for purposes of war, and even a baby's feeding bottle can be converted into a dangerous bomb. Everything therefore is now either contraband or conditional contraband. This creates an impossible condition for neutrals, and when facts or the changes caused by human progress render the old laws or the old rules intolerable, common sense calls for their amendment, but the Anglo-Saxon sense of justice calls also for a fair compromise between conflicting claims. It is impossible to define contraband when everything is contraband, but it is easy to distinguish between absolute contraband, that is to say, war material—and articles which have a double use. A fifteen inch howitzer is not an article used in a citizen's household, nor is a machine gun, and there is no difficulty in distinguishing articles which are of military use only: but it is the fact that everything else has both a military and a civil use. To confiscate all articles of conditional contraband would be an intolerable act of robbery and injustice to neutrals. But the right of a belligerent to intercept supplies and succors to his enemy remains. A fair compromise has been found in the past between these two conflicting rights by the system of preemption, or purchase. By the control of commerce, instead of the confiscation of commerce. There is no reason in justice why a belligerent should not intercept supplies going to his enemy provided he pays for them, if they are neutral property, and have a double use. War material always has been liable to confiscation, and there is no reason why it should not remain so liable.

But this rule has a logical consequence. If private property on board ship is exempt from confiscation the ship that carries that property must be exempt from destruction. The iniquitous destruction of peaceable merchant ships during the recent war has horrified and

disgusted humanity. It would be easy to show that it has no legal justification, but it would be a waste of words to do so. For in this matter, we are dealing with a question which transcends the logic or the rules of jurists. It affects all humanity, and whatever rules may be framed for the future guidance of belligerents it is certain that suffering humanity will see to it that the destruction of merchant ships must be prohibited, and the prohibition must be made effective without any exception of any kind whatsoever. A merchant ship taken as prize, must be brought into port and not destroyed.

But this rule would admittedly be to the advantage of the strongest naval power. So it is but just that some concession should be made to the weaker naval powers. During the eighteenth century the right of asylum, or the right to take prizes into neutral ports, was frequently stipulated in treaties not limited to America, but treaties made by European powers including England. The concession of the right of asylum might be and is recommended as a compensation for the limited, and exceptional right of destruction such as it exists in International Law today.

But the prohibition of the right to destroy involves the abandonment of the right to arm. In this, as in every war, it has been proved that if an orgie of barbarism is to be avoided it is all important that there shall be a clear distinction between combatants and noncombatants—and a noncombatant should not be armed. It is no doubt the legal right of a noncombatant merchant vessel to arm and to fight in self-defense. But if the noncombatant is to be immune and to enjoy the rights of a noncombatant she must be a noncombatant. From the moment that the law protects the immunity of noncombatants, the right to arm, and the right to resist visit and search cease to have justification. It is not always possible to define self-defense. If two men meet, each carrying pistols, each entitled to shoot, it is hard to say that the man who fires first does not act in self-defense. The frontier between offense and defense is an indeterminate frontier, and it is but just that if a merchant ship should be exempt from all danger she should cease to be a danger to the vessel exercising the right of visit and search.

Here, then, if we are to examine history and the experience of

today, lies the path of progress. Rightly regarded, the proposals now submitted are a continuation of the path trodden in the past. If adopted, they will lead the way to a modification of the hardships and horrors of war, and will serve that purpose until wars shall cease and the world attains the blessing of a rule of universal law and universal peace.

GRAHAM BOWER.

EDITORIAL COMMENT

PEACE CONFERENCE DELEGATES AT PARIS

UNITED STATES: President Woodrow Wilson, Honorable Robert Lansing, Secretary of State; Honorable Henry White, Honorable Edward M. House, General Tasker H. Bliss.

BRITISH EMPIRE: Right Honorable D. Lloyd George, M.P., Premier; Right Honorable A. J. Balfour, M.P., Secretary of State for Foreign Affairs; Right Honorable A. Bonar Law, M.P., Lord Privy Seal and Leader of House of Commons; Right Honorable G. N. Barnes, Minister without Portfolio; Right Honorable Sir W. F. Lloyd, K.C.M.G., Prime Minister of Newfoundland.

BRITISH EMPIRE. Dominions and Colonies:

CANADA: Right Honorable Sir G. E. Foster, G.C.M.G., Minister of Trade and Commerce; Honorable A. L. Sifton, Minister of Customs.

AUSTRALIA: Right Honorable W. M. Hughes, Prime Minister; Right Honorable Sir Joseph Cook, G.C.M.G., Minister for Navy.

SOUTH AFRICA: Right Honorable Louis Botha, Prime Minister; Lieutenant General Right Honorable J. C. Smuts.

NEW ZEALAND: S. F. Massey, Prime Minister.

INDIA: His Highness Sir Ganga Singh, etc., Maharaja of Bikaner; Honorable Lord Sinha, Undersecretary of State, representing the Secretary of State for India.

FRANCE: M. G. Clemenceau, President of the Council, Minister of War; M. Pichon, Minister for Foreign Affairs; M. L. L. Klotz, Minister of Finance; M. Andre Tardieu, Commissioner General for French-American War Affairs; M. Jules Cambon, Ambassador of France.

ITALY: M. Orlando, Prime Minister; Baron Sonnino, Minister of Foreign Affairs; Marquis Salvago Raggi; M. Antonio Salandra, M. Salvatore Barzilai.

JAPAN: Marquis Kimmochi Saionji, former Prime Minister; Baron Nobuaki Makino, Member of Diplomatic Council; Vicomte Sutemi Chinda, Ambassador to Great Britain; Keisheiro Matsui, Ambassador to France; M. Ijuin, Ambassador to Italy.

BELGIUM: M. Hymans, Minister of Foreign Affairs; M. Van Den Huvel, Minister to Vatican; M. Vandervelde, Minister of Justice.

BRAZIL: M. Epitacio Pessoa, Senator, former Minister of Justice; M. Olyntho do Magalhaes, Minister to France, former Minister of Foreign Affairs; M. Pandia Calogeras, Deputy, former Minister of Finance.

SERBIA: M. Pachitch, Prime Minister; M. Trumbitch, Minister of Foreign Affairs; M. Vesnitch, Minister to France.

CHINA: M. Lou Tseng Tsiang, Minister of Foreign Affairs; M. Chengting Thomas Wang.

GREECE: M. Eleftherios Venizelos, Prime Minister; M. Nicolas Politis, Minister of Foreign Affairs.

HEDJAZ: S. A. L. Emir Feisal, M. Rustem Haidar.

POLAND: M. Roman Dmowski, President of the Polish National Committee; name of other delegate not on record.

PORTUGAL: Dr. Egas Moniz, Deputy, Minister of Foreign Affairs; Dr. Arthur Vilella.

ROUMANIA: M. Jean J. C. Bratiano, Prime Minister and Minister of Foreign Affairs; M. Nicolas Misu, Minister to England.

SIAM: Prince Charoon, Minister to France; Phya Bidadh Kosha, Minister to Italy.

CZECHO-SLOVAKS: M. Charles Kramar, Prime Minister; M. Edouard Benes, Minister of Foreign Affairs.

BOLIVIA: M. Ismael Montes, Minister to France.

CUBA: M. Antonio Sanchez Bustamante (provisionally replaced by M. Rafael Martinez, Minister to France).

ECUADOR: M. Dorn de Alsua, Minister to France.

GUATEMALA: One delegate. Name not on record .

HAITI: One delegate. Name not on record.

HONDURAS: One delegate. Name not on record.

LIBERIA: One delegate. Name not on record.

NICARAGUA: One delegate. Name not on record.

PANAMA: M. Antonio Burcos, Minister of the Republic of Panama in Spain.

PERU: Don Francisco Garcia Calderon, Peruvian Minister to Belgium.

URUGUAY: M. Juan Carlos Blanco, Minister of Uruguay to Paris.

TWO TREATIES OF PARIS

As we watch with absorbing interest the last step of the war drama at Paris, our minds naturally turn to that other negotiation at Paris just over a century ago which, followed by the Congress of Vienna, likewise wound up an era. As to method or as to substance, has it anything to teach us now?

The Peace of Paris, signed May 30, 1814, consisted of treaties, nearly identical, between France under Louis XVIII and Great Britain, Prussia, Russia, Austria, Sweden and Spain.

The preamble, as given in English by Hertslet in his Map of Europe by Treaty, reads as follows:

> Animated by an equal desire to terminate the long agitations of Europe, and the sufferings of mankind, by a permanent Peace, founded upon a just repartition of force between its States, and containing in its Stipulations the pledge of its durability; and His Britannic Majesty, together with his Allies, being unwilling to require of France, now that, replaced under the paternal Government of Her Kings, she offers the assurance of security and stability to Europe, the conditions and guarantees which they had with regret demanded from her former Government, have named Plenipotentiaries to discuss, settle and sign a Treaty of Peace and Amity.

Can we in the same generous way assume that the will-o'-the wisp republics of Austria and Germany and Russia assure security and stability to Europe? I trow not. Nor did the Allies in 1814 altogether make good their profession of trust in France. For an additional and secret article provided that:

> The disposal of the territories given up by His Most Christian Majesty, under the Third Article of the Public Treaty, and the relations from whence a system of real and permanent Balance of Power in Europe is to be derived, shall be

regulated at the Congress upon the principles determined upon by the Allied Powers *among themselves*, and according to the general principles contained in the following articles.

Thus the Allies proposed, but Talleyrand disposed. As one writer says: "But in fact at the Congress of Vienna, the adroit audacity of Talleyrand and the disagreement of the Allies between themselves secured for France a considerable amount of influence."

The Congress to which this peace of Paris was a curtain-raiser lasted nearly eight months, being disturbed by Napoleon's escape from Elba and the great adventure of the hundred days.

The Congress of Vienna was a meeting of dictators for arranging the affairs of Europe according to their arbitrary views, and in effect required the smaller powers to submit to their decrees, without a share in their deliberations.

If such a Congress attempts to be a really deliberative body it becomes a bear garden. Some small group must control it, and who has a better call than those who have borne the heat and burden of the day. The equality of States does not mean equality of influence.

Eight powers were represented at Vienna and one of them refused to sign. The settlement at Vienna was one dictated by autocracy and had no lasting value. "To perfect the arrangements which appear in the final act, a multitude of special compacts had to be made, some of which were annexed to that instrument and declared to be a part of it." In point of fact there were fifteen such. The treaty itself comprised one hundred and twenty-one articles. They ranged in importance from the creation of a German Confederation to the neutralization of Cracow. They opened the Rhine and the Scheldt to free navigation. At Paris most of the captured French colonies had been restored and the French ships in continental ports were apportioned.

The precedence of diplomatic agents was regulated. The language of the treaty was French but expressly declared not to be a precedent.

Territorial changes were based upon prior ownerships, not upon racialties or a people's wishes.

There is example, there is also warning, for us to-day in the settlements of Paris and Vienna.

A new German Confederation may be created. If it includes German-Austria, thus weakening relatively the power of Prussia, will that be a factor of strength or of weakness in the future?

Partitioned Poland, after its tragic history, may be once again a

powerful state with a sea coast, but will its political life be any more harmonious than its past gives reason to expect?

Unless Russia is reassembled, will not the development of her parts, her commercial future, be darkened?

We may rejoice in Italy's recovery of her Irredenta, yet deprecate her greed to absorb the Adriatic littoral.

There is plenty of room for mutual jealousies; is any Talleyrand in sight to play upon them?

The territorial adjustments at Vienna were based upon a return to the *status quo* of 1792 in the main, but "compensations" were demanded in addition. Russia also was determined upon the possession of Warsaw, while Prussia claimed Saxony, which had adhered to Napoleon. These demands split the solidarity of the four leading Powers. France came in with Austria and Great Britain, consequently to keep the other two in check, and worked for a return to arms which was avoided by yielding in part to Russia's and Prussia's insistence.

In this we see the tendency of a coalition which has won its war to fall apart. The cementing influence disappears and other earlier causes of friction revive. For the purification of national character, which, according to some, war brings about, does not abolish national selfishness.

The situation at Vienna was comparatively simple, however. An autocratic shuffling of the stakes and a redistribution on the line of least resistance satisfied the parties.

But to-day we have a more complicated set of problems and a more exacting and critical gallery, because it is a democratic body responsible to many peoples.

The territorial adjustments which are demanded are fairly revolutionary, setting up certain new states, shearing certain old ones, combining, effacing, protecting, repairing the crimes of past ages.

Moreover, the principles by which the powers profess to be guided are obscure and ill defined. Take one of the simplest cases, that of Alsace-Lorraine.

Mr. Wilson's reference to this in his fourteen pointed address said that the wrong of 1871 should be righted. He has also adhered to the principle of self-determination for small peoples.

Well, then, are Alsace-Lorraine to go back to France as the result of a plebiscite if restored at all, or not? On this we may be sure Germany will be vociferous.

Or consider the respective claims of Italy and the new and greater Servia to Illyria as far as Fiume. What settlement of this problem can be worked out which will not sow the seeds of future trouble?

How shall Constantinople and the Straits and Palestine be treated?

But besides the difficult territorial problems are others even more apt to cause difference, and of a nature which the diplomats at Vienna could not have conceived.

Punishment for war crimes; how shall they be tried and how shall they be punished, yet unless tried and punished, the laws of war are no better than a dead letter!

Reparation for illegal ship sinkings, particularly of neutral owners; how can this be obtained when there are not German ships and German money enough to give reparation?

What is freedom of the seas; and if it means a weakening of the naval arm can it and should it be demanded of that British fleet which has saved civilization from German domination?

A league to enforce peace; something which everybody wants but no one is quite sure how it is to be brought about.

The question of disarmament, the abolition of conscription in its old form, without which we shall see a return to the race for armaments and the impoverishment of all peoples. How is this reconcilable with our demand for a great navy as "big as anyone's," say the sponsors of the plan. And then there is the tremendous problem of finding amongst our enemies that responsibility and that sovereignty with which alone we can deal.

The catalogue is long enough to point my moral. When you have a number of intricate and controversial questions to discuss; when the debaters are many and governed by a variety of motives, from greed to altruism, from sense to sentimentality; when the peoples of the world, watching each move in the game, are governed by unbridled democracy as never before; how can you get results?

Only, as it seems to the writer, by limiting the topics; by postponing the most controversial ones; by strenuous efforts to do justice; by establishing control in a few hands, which shall be dictatorial; and by taking to heart the warning of Vienna.

THEODORE S. WOOLSEY.

INTERNATIONAL EXECUTIVES

An interesting example of the possibility of establishing, on a practical and workable basis, international executive committees with certain delegated powers conferred upon them by the participating governments, for the purpose of securing joint international control in special spheres of common interest, is furnished by the successful operation during the war of international executives for nitrate of soda, tin, hides and leather, and certain other raw materials, and some food supplies.

These Executives, as they were called, were international joint committees organized by agreements between the United States and the principal Allied Governments, each committee being vested with certain well-defined executive powers relating to the procurement and distribution of some one or more of the materials mentioned to the best advantage of all the participating countries.

In the case of each of these materials the estimated world's supply available for the use of the Allies was inadequate for their requirements, and it was therefore necessary to adopt some method of stimulating production and at the same time to avoid unduly increasing the prices by competitive and unregulated buying; and to determine by common consent the share of these materials to be apportioned to each of the Allied countries and arrange for its allocation in accordance with their agreed requirements; and also to arrange for supplying each country from the markets most conveniently located for procuring its requirements with reference to shipping facilities which constituted a limiting factor in making the world's production available.

The general plan upon which all of these Executives were formed was for the appropriate governmental agency in each country to enter into a special agreement with the others, establishing the particular Executive created thereby and stipulating that it should be composed of an agreed number of representatives of each participating country with authority to carry out the specified arrangements agreed upon, with the proviso that these arrangements must be modified and readjusted from time to time by such further agreements as might be necessary in order to serve the best interests of all concerned. These

special agreements further provided for and defined, subject to the aforesaid reservation as to modifications and readjustments, the specific powers and duties of the Executives thereby established.

Different problems and conditions presented themselves in each case, requiring corresponding differences in treatment. In the case of nitrate of soda, for example, except for the supplementary supply produced through fixation plants and other artificial processes, which had been established during the war in the Allied countries, the entire available world's supply came from a single source, which was the natural nitrate beds in Chile, a neutral country, and the entire output of these beds was necessary to meet the requirements of the Allies. In the case of nitrate of soda, therefore, the problem was to arrange for the procurement of the largest possible output of nitrate from Chile at the lowest prices consistent with the greatest possible production, and to determine, by joint agreement among the Allies, how this supply should be allocated to the best advantage of the Allied interests.

To meet this situation an inter-allied agreement establishing the nitrate of soda Executive provided that all nitrate for use in the participating countries should be purchased only when and as authorized, and at prices fixed by the Executive, and that all purchases so authorized should be made under the direction of a Director of Purchases appointed by the Executive, and also that all nitrate so purchased should be pooled both as to quantity and price for the common interest of the governments concerned, and that the amount to be imported to each country should be determined by the Executive in accordance with prearranged allocations as fixed by the terms of the agreement.

Different methods of procurement and purchasing were found to be necessary in the case of some of the other raw materials mentioned, where only a part of the annual output came from neutral countries and a considerable quantity of the available supply was produced within the United States or in territories under the jurisdiction of some of the Allied Governments. In some cases it was found advisable, instead of empowering a single director of purchases to act for all, to arrange for several directors of purchases in the different markets, all acting under the direction of the Executive and in conjunction with each other for the mutual advantage of the several governments concerned. Again, in some cases it was found advisable

to allot to each country separate markets exclusively for its own purchases as well as to allot to each country its proportionate share of purchases made in a common market. In such cases it was provided that if the allocation of markets resulted in disadvantage to any of the participating countries through inequality of prices in different markets, then the cost of purchases in the different markets might be equalized by the Executive by monthly readjustments, so that all participating countries would pay the same average price for their respective shares, and the Executive was also authorized to require that all purchases made for account of more than one of the participating countries in a common market should be pooled as to quantity and price. In every case, however, each of the participating countries reserved to itself the right to determine the purchasing agencies or importing houses through which its allocated share should be purchased, either in its own markets or in the markets of other countries.

Another function of the Executive, which was common to all of these arrangements, was the authority to collect information as to methods adopted in the participating countries for economy in the domestic distribution and use of the raw material dealt with, and with power, whenever it was considered desirable, to make recommendations to each of the participating countries with reference thereto, and each of the countries was required to keep the Executive fully informed of all supplies on hand, and of all its purchases from all sources for its own use.

The underlying condition, which was essential to the success of these arrangements and which entered into all of them, was the governmental control exercised during the war in each of the participating countries over imports and exports, because it was necessary to agree, with reference to the materials under the control of each Executive, that the respective governments would exercise such control over their respective nationals as would prevent them from buying these materials through any channels except those provided for under the direction of the respective Executives.

It is difficult to overestimate the importance of the results secured through the control exercised by these Executives in regulating the price and the consumption of these materials, and in stimulating their production when the available supply was normally inadequate to meet the requirements of the Allies, as well as in arranging the

allocation of these materials among the Allies in accordance with the best interests of all concerned.

It remains for the future to disclose whether the principle of international cooperation, applied during this war through the operations of international executives, will find its way into the economic conditions prevailing in time of peace.

CHANDLER P. ANDERSON.

SOME POINTS AS TO SHIPS IN ENEMIES' PORTS AS PRIZES

An opera is often judged by its overture. The British prize courts have adopted a like practice as to the Hague Conventions and various international agreements which have been considered by them.

Thus the Judicial Committee of the Privy Council (*The Germania*, 4 Lloyd's P. C., p. 268), observing that the preamble of the Sixth Hague Convention stated that the signatory Powers, "anxious to insure the security of international commerce against the surprises of war, and wishing, in accordance with modern practice, to protect, as far as possible, operations undertaken in good faith and in process of being carried out before the outbreak of hostilities, have resolved to conclude a Convention to this effect," holds:

> These words clearly indicate that the purpose of the convention is the security of international commerce, and that the operations undertaken in good faith and in process of being carried out are operations of a commercial character.

Therefore, the right to days of grace, and other privileges and exemptions given by that convention, was denied to ships not *navire de commerce* and so to a very valuable racing yacht.

The prize court went further and held these privileges would be denied to merchant ships, except when engaged in operations of a commercial character.

Thus, the *Prinz Adalbert* and *Kronprinzessin Cecelie* (4 Lloyd's P. C., p. 360), German steamships, belonging to the Hamburg-American Line, having been advised that war had broken out between Germany and France, sought refuge from capture by French warships by taking refuge in a British port (Falmouth) and, on the outbreak of

the war between Great Britain and Germany a day later, were there seized and held as prizes. They claimed the right to depart freely, or within days of grace, under the above Hague Convention, or, if not, that they were subject to detention only and not to condemnation. The President of the Prize Court, Sir Samuel Evans, held the vessels not in port "in pursuance of any commercial undertaking at all. When the master took the vessel into port and kept her there his object was not to engage in commerce; he was not taking part in any commercial operation whatever; but was using the port for a totally different purpose, which I think was not contemplated when the Powers agreed on this provision of the Hague Convention." Accordingly, he condemned the ships as *droits* of Admiralty in favor of the Crown.

On appeal to the Judicial Committee of the Privy Council, however, their Lordships were of opinion that the effect of the preamble of the Sixth Hague Convention, and Articles 1 and 2 thereof, admitted of considerable doubt. Therefore, they refused to decide the question at that time, but indicated that an order for detention only and not condemnation was correct, reserving all rights until the views of Germany as to this Convention were ascertained. (4 Lloyd's P. C., p. 372.)

The Judicial Committee, moreover, dealt with the case of a certain German ship which had sought refuge at Port Saïd within the territory neutralized in connection with the Suez Canal, having arrived in ignorance of the state of war August 5, 1914. She was, on October 16, taken possession of by the Anglo-Egyptian Government and conducted more than three miles out to sea and delivered to the British Cruiser *Warrior,* which seized her as a prize. On hearing in the Egyptian Supreme Court, sitting in Prize at Alexandria, the ship was held properly seized as a prize and ordered detained until further orders. Later the court held that Article 2, Hague Convention No. 6 of 1907, applied, and ordered the ship detained during the war, with a declaration that she must be restored or her value paid to her owners at the conclusion of hostilities.

The case was that of the *Gutenfels,* and there were included with it those of the *Barenfels* and *Derfflinger.* The Crown appealed in the two first and the owner of the *Derfflinger* appealed, she having been condemned on the special ground that she was built for conversion into a war-ship.

The Judicial Committee of the Privy Council held that Egypt

was not a party to the Hague Convention, but their Lordships declined to decide whether or no the Convention applied to Egypt.

It may be suggested in passing that Egypt could not be a party to the Hague Convention, not being a sovereign nation but part and parcel of the Ottoman Empire, or if not, then of the British Empire. However, they assumed that the Convention did apply.

They held further that Port Saïd was a port enemy to Germany, having regard to the British occupation of Egypt; that on August 4, 1914, a British Order in Council recognized the validity of the Hague Convention aforesaid, conditional on Germany doing the same within a limited time. Germany did not do so and the order did not, therefore, become operative.

Their Lordships inclined to think, however, this did not apply to Egypt.

On August 5, 1914, the Egyptian Government issued a decision or decree like the above Order in Council in many respects, but allowing days of grace to enemy ships in her ports, coming under the terms of the Convention, to sunset, August 14, for ships not more than 5,000 tons gross. The *Gutenfels* was of greater tonnage, so this did not apply to her.

Their Lordships held the inaction of Germany prevented the Hague Convention as above from coming into operation as between Great Britain and Germany; that the ship had long outstayed any limited right of exemption to which she might be entitled from her passage through the Suez Canal, assuming that she had such right. They approved a modified order, as in the case of the *Chile,* for detention, leaving the ultimate rights between the parties to be determined after the war.

The same conclusion was reached as to the *Barenfels.*

As to the *Derfflinger,* it was held that her construction, designed for conversion into a war-ship, prevented the Hague Convention from applying (see Article 5); that her voyage through the canal was over and her journey rendered abortive by the war, and she had landed both cargo and crew; that when war broke out the vessel was in the port, not in the exercise of a right of passage, but by way of user of the port as a port of refuge; that under these circumstances the Canal Convention had ceased to be operative and she was not entitled to any protection.

They said it was also found she had communicated from the port

by wireless with the German war-ships the *Goeben* and the *Breslau;* that the order for her confiscation was right. (*Gutenfels, Barenfels, Derfflinger,* 4 Lloyd's P. C., 336.)

The line of decisions indicates the difficulty of the points of law which a master, seeking to save his ship from capture, must have to determine. Without reproach to the individual judges, they indicate, too, the strongly partisan character of Prize Jurisdiction where the claimant's rights are habitually adjudicated by an alien, very commonly, of course, an enemy Court, in which ingenuity in detaining or condemning is almost certain to be the predominant trait.

The professions of a wholly impartial and detached view on the part of the judges are habitual, but it would often be more consistent if they were omitted.

It would seem as if a vessel on a commercial voyage which, seeking to escape a violent storm, took refuge in a sheltered port, was in no way abandoning her commercial adventure, but wisely seeking to preserve it from injury or destruction. It is difficult to see why the same line of reasoning does not apply to a merchant ship threatened by the clouds of war while on a commercial voyage, which, in consequence, seeks the shelter of a neutral port.

CHARLES NOBLE GREGORY.

PAN-NATIONALISM

The League of Nations, or some form of pan-nationalistic idea, seems to be meeting with more favor in the second decade of the twentieth century than the idea of nationalism met in the corresponding period of the nineteenth century. There is, however, a striking similarity in the reception which these ideas have received in their respective periods.

The idea that nationality should be embodied in political unity was unpopular among many of the public men of the early nineteenth century. Even when the struggle involving liberalism, constitutionalism and the development of the doctrine of nationality was at its height, it was difficult for some of those in high position to conceive how such ideas could permanently endure. Some of these doubters maintained that placed as they were by divine providence on thrones and "beyond the passions which agitate society" they should "not abandon the

people whom they sought to govern to the sport of factions, to error and its consequences, which must involve the loss of society," but in spite of this contention they have been forced to yield their places.

During the nineteenth century nation after nation found itself lacking in security when it relied upon itself and found the burdens of independent military preparation increasingly heavy, and far from light when shared through the creation of alliances. The Czar of Russia, realizing these conditions in 1898, proposed an international conference upon these and other matters. When this conference met at The Hague as the first Peace Conference in 1899, the idea of internationalism was particularly emphasized. At this time, too, there were many scoffers, and the cartoonists made merry with some of the plans. The idea of internationalism had, however, been developing through the unfolding of the concept of the family of nations which, though at first European, came to include the United States after its independence, then Turkey after 1856, and Japan from 1899. Japan recognized the significance of entering into this family, and the Emperor at this time said:

> In view of the responsibilities that devolve upon us in giving effect to the new treaties, it is our will that our ministers of state, acting on our behalf, should instruct our officials of all classes to observe the utmost circumspection in the management of affairs, to the end that subjects and strangers alike may enjoy equal privileges and advantages and that, every source of dissatisfaction being avoided, relations of peace and amity with all nations may be strengthened and consolidated in perpetuity.

Japan thus came as a nation in full standing to the First Hague Conference in 1899, where in all twenty-six states were represented. At the Second Hague Conference in 1907 the number of states represented was forty-four. It was, however, clearly announced that these conferences were called with "the desire to arrive at that high ideal of international justice which is the constant aim of the whole civilized universe." The various conventions drawn up at these conferences were, nevertheless, for the most part, binding only upon states which ratified them and only a degree of internationalism was secured, but not regulations for "the whole civilized universe."

Suarez, in 1612 even, had realized the need of a more general basis for world security, and in looking about at the states of his day said: "None of these states is sufficient for itself; all have need of reciprocal support, association, and mutual relations to ameliorate their situa-

tions.'' The representatives of some states at the Peace Conference of 1919 seem to be holding the old ideas of balance of power, alliances, and other combinations, while others seem to appreciate the drift toward the recognition of a degree of world unity. Metternich in his day viewed the effort of peoples to obtain embodiment in national unities as ''absurd in itself.'' So in these days some view ''the paramount authority of the public will'' as did Metternich, but Metternich, and Francis Joseph, who connected Metternich's day with the twentieth century, have both passed away. As nationalism was not sacrificed, but, rather when separated from provincialism, given a greater opportunity for self-realization through the development of internationalism, so nationalism and internationalism, as is clearly shown in the demand for self-determination of peoples and for effective sanction for international rights, will not be sacrificed in the development of pan-nationalism, but will be offered an opportunity for development to a degree hitherto unknown.

G. G. W.

THE RECOGNITION OF THE CZECHO-SLOVAKS AS BELLIGERENTS

In September, 1918, the Secretary of State announced that, as the Czecho-Slovak peoples had taken up arms against the German and Austro-Hungarian Empires, and had placed organized armies in the field, which were waging war against those empires, under officers of their own nationality and in accordance with the rules and practices of civilized nations; and that as the Czecho-Slovaks had, in the prosecution of their independent purposes in the existing war, confided supreme political authority to the Czecho-Slovak National Council,

> The Government of the United States recognizes that a state of belligerency exists between the Czecho-Slovaks thus organized and the German and Austro-Hungarian Empires.
>
> It also recognizes the Czecho-Slovak National Council as a *de facto* belligerent government, clothed with proper authority to direct the military and political affairs of the Czecho-Slovaks.

It was also announced simultaneously that the Government of the United States was prepared to enter formally into relations with the *de facto* government thus recognized for the purpose of prosecuting

the war against the common enemy, the Empires of Germany and Austria-Hungary.

The tests which are commonly laid down respecting the propriety of the recognition of the belligerency of insurgents by a foreign power are designed to indicate the circumstances when such action may be taken without justifying complaint by the parent state engaged in the task of repression. The absence of ground for such complaint permits on principle the maintenance of friendly relations between that state and the power according recognition. The act of recognition serves, moreover, to release the former from responsibility for whatever may be done by the insurgents.

The recognition accorded the Czecho-Slovaks rested upon a different basis. The United States was at war with Austria-Hungary as well as Germany, and possessed the right as a belligerent to endeavor to cause the disintegration of either Empire as a means of weakening opposition and of hastening the day of victory. There was no duty to the enemy to refrain from such action. Hence it became unimportant whether, in recognizing the Czecho-Slovaks, those conditions were met which should have been satisfied had the United States been a neutral seeking to avoid participation in the conflict as the enemy of the Central European States.

That it was reasonable as well as expedient for the United States to accord recognition when it did, is not open to question. The justness of the claim of the Czecho-Slovak peoples to the control, disposition and government of the territories which they had long occupied was not lessened by their inability to maintain an army within their ancestral lands. Nor did that circumstance necessarily render arbitrary the determination of the United States and of the Allies to assist those peoples to realize their national aspirations through the recognition accorded. This mode of helping the Czecho-Slovak peoples in their struggle to bring into being a new State might have been open to criticism had their armies been disorganized bands waging a ruthless war regardless of the practices of civilized nations, or had they not confided their supreme political authority to an organized national council, or had their aspirations been deemed unsound in principle or incapable of exact geographical definition. In no one of these respects, however, were the Czecho-Slovaks wanting. It is believed that the United States acted wisely in pursuing the course which it did, and which was in harmony with the action taken by Great Britain in

August, 1918. The text of the Declaration of Independence of the Czecho-Slovak nation, adopted at Paris October 18, 1918, gives promise of a new State whose ancient heritage of independence strengthens hope in the virility of its institutions, and whose profession of allegiance to principles of democracy gains increased respect through the announcement of a readiness to assume a proper portion of the Austro-Hungarian pre-war public debt.

CHARLES CHENEY HYDE.

PLEASURE AND RACING YACHTS IN PRIZE LAW

The prize courts in the present war have been called on to decide some novel points as to the status of private yachts, and to consider their rights in several particulars.

The Austro-Hungarian steam yacht *Oriental*, two hundred and eighty tons burden, owned by Dr. Desiderius de Bayer Kruesay, of Budapest, was at Southampton at the outbreak of war and was there detained. Two days later Austria-Hungary agreed to days of grace and the yacht was released. However, the days of grace expired and she was still at Southampton and was again seized.

It was found that she was flying from her stern post a Hungarian flag. There was no authorized flag of Hungary, but there was an Austro-Hungarian flag, and the flag in question was a part of this.

It was claimed she was a Swedish vessel registered with the Royal Swedish Sailing Association, with a Swedish crew and captain, and jointly owned by Dr. Kruesay and Dr. Banck, of Helsingborg, Sweden. She had gone to Cowes for the Regatta and was thus in British waters.

The President of the Prize Court, the Right Honorable Sir Samuel Evans, held that clearly, by the ship's papers and from the fact of her flying the Hungarian flag, her nationality must be held to be Hungarian; that the fact that the owner was admitted a member of a Swedish yacht club was absolutely immaterial; that the papers showed ownership in Dr. Kruesay alone, and by the settled rules of prize law, as well as by the Declaration of London, the test of nationality was the flag a vessel was entitled to fly.

The Crown contended that the provision of the Hague Convention, giving vessels in a hostile port at the outbreak of war days of grace, applied only to merchant vessels and not to pleasure yachts. This contention seems to have been allowed, and the days of grace to have been granted by the Crown notwithstanding. The yacht, for some reason, failed to avail herself of these days.

She was therefore held clearly enemy property, condemned, ordered sold, and the proceeds paid into court.

The President refused an application for admission of an appeal. (*The Oriental,* 1 Lloyd's [1915], P.C. 355.)

About six months later the same court was asked to condemn the celebrated German racing yacht *Germania,* one hundred and twenty-three tons (net), owned by Gustav Krupp von Bohlen, of the Imperial German Yacht Club. She was estimated worth £45,000, and came to Southampton to take part in the Cowes Regatta, with a German skipper and crew and also an English skipper and mate.

She was dry docked for repairs, but was seized August 4, 1914, in the wet dock at Southampton. An order merely for her detention during the war was at first made, but later her condemnation was claimed.

On behalf of her owner it was urged that, being in a British port when hostilities broke out, the order for detention should remain in force, that she had never been given days of grace to enable her to depart, and that, as a racing sailing yacht of no value for commercial, naval or military purposes, she was not confiscable, and confiscation would be contrary to the comity of nations and the Hague Conventions.

Austria-Hungary had given days of grace and therefore they were allowed to the Hungarian yacht above. Germany gave no days of grace.

The President held that a racing yacht, clearly, did not come within the Sixth Hague Convention, which dealt only with matters relating to commerce and was meant only to protect those engaged in commerce. He held this yacht not within the term *navire de commerce.* That not being protected by the Hague Convention, it must be condemned.

Repairs had been made before seizure and later to keep the yacht from deterioration, at the risk of repairers, and the court was prepared to decide against a claim interposed for them, but the Crown

consented to a reference and the Court was glad of this. (*The Germania,* 4 Lloyd's P. C. 237.)[1]

The London *Times* of January 18, 1918, states that the *Germania* only realized £10,000, and was bought by Mr. H. Hannevig, a Norwegian resident in London, and transferred to his brother, Mr. C. Hannevig, of New York. Ten thousand pounds was deposited with the marshal as a guarantee that during the war she would not be transferred to an enemy, and this sum was, through the marshal, presented by Mr. C. Hannevig to the British and French Red Cross Societies, a new guarantee being substituted. (4 Lloyd's P. C., p. 238, note.)

It appears that a Belgian yacht, the *Primavera,* was seized by the Germans when they entered Antwerp, and condemned in the Hamburg Prize Court. The Court said it was not established that the nations have firmly adopted the practice of excluding yachts from the right of capture at sea. (4 Lloyd's P. C., p. 265, note.)

Mr. Bateson, K.C., contended in the English Prize Court that the German Court placed the *Primavera* in the same category as merchant ships, but his contention was not successful in inducing like action in the English courts.

The cases seem to establish that the old classification of vessels as ships of state or merchant ships is not comprehensive. That yachts, either designed for pleasure cruising or for racing, and whether propelled by steam or sail, are a separate class, and not entitled to the special exemptions or privileges accorded to either of the other classes.

CHARLES NOBLE GREGORY.

AGREEMENT BETWEEN THE UNITED STATES AND GERMANY CONCERNING PRISONERS OF WAR[2]

On November 11, 1918, the American and German delegates at Berne signed an agreement concerning prisoners of war, sanitary, personnel and civil prisoners. As the armistice was signed on the same date, the provisions of this Prisoners' Agreement were superseded by the terms of the armistice, and therefore it is unlikely that

[1] The decision was affirmed by the Judicial Committee of the Privy Council March 29, 1917. 4 Lloyd's P. C., p. 266.

[2] Printed in Supplement to American Journal of International Law, January, 1919.

the Prisoners' Agreement will ever be ratified and put into force. The provisions of this agreement, however, are of interest as showing the extent to which it was considered necessary to establish, by a most definite and explicit agreement, the enforcement of humane treatment of prisoners of war.

The treatment of prisoners of war had been previously considered at the two Hague Conferences, and the agreement reached, which was substantially the same at both Conferences, was embodied in a section of the annex relating to the Laws and Custom of War on Land, attached to Hague Convention II, of 1899, and Hague Convention IV, of 1907.

Both of the Conventions above mentioned provided that their provisions and regulations did not apply except between contracting powers, and then only if all the belligerents were parties to the Convention. Inasmuch as Serbia had never ratified the 1907 Convention it has not been applied in this war. The 1899 Convention, however, had been ratified or adhered to by all the belligerents engaged in the conflict until the entrance of Liberia on August 4, 1917, and therefore the provisions and regulations of this Convention were technically in force until that date.

The general treatment provided for in 1899 Hague Convention II was that the prisoners of war "must be humanely treated;" that they "may be interned in a town fortress, camp or any other locality, and bound not to go beyond certain fixed limits, but they can only be confined as an indispensable measure of safety;" and their labor may be utilized according to their rank and aptitude, but "their tasks shall not be excessive, and shall have nothing to do with the military operations;" and that they "shall be subject to the laws, regulations and orders in force in the army of the State into whose hands they have fallen." This agreement also contains regulations governing the employment at labor and the payment therefor, parole, establishment of a bureau of information and its functions, pay to officers, religious freedom, wills, burial, repatriation, etc. It further provides that "failing a special agreement between the belligerents, prisoners of war shall be treated as regards food, quarters, and clothing, on the same footing as the troops of the government which has captured them."

It would seem that these requirements were precisely the terms which any civilized and self-respecting nation would impose upon

itself in the treatment of its prisoners without the obligation of any treaty stipulations.

Furthermore a special agreement on this subject had been made in Article XXIV of the Treaty of Amity and Commerce between the United States and Prussia, signed July 11, 1799, revived by Article XII of the Treaty of May 1, 1828, and subsequently accepted by the German Government as binding upon the empire. By this agreement the two contracting parties solemnly pledged themselves that, in case of hostilities between them, prisoners of war should not be subjected to destructive treatment but

> they shall be placed . . . in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such rations as they shall allow to a common soldier in their own service; . . . that each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see that prisoners, as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him. . . .

In view of the above-quoted provisions governing the treatment of American and German prisoners, and the standards supposed to have been reached by twentieth century civilization, it is significant that in this war it was considered imperative by the American Government to insist upon a new prisoners' agreement with Germany, which will be found to contain 184 articles, together with seven elaborate annexes.

From the provisions incorporated in this Prisoners' Agreement it would appear, that while in the year 1899 and also in the year 1907 the words "humane treatment" were regarded as having a universally accepted meaning, unnecessary of minute definition, in the year 1918, as a result of the treatment experienced by prisoners during this war, the American delegates deemed it advisable to set forth in the greatest detail the acts to be permitted and the acts to

be prohibited in complying with the regulation requiring "humane treatment" for prisoners.

Selecting at random from the provisions of this agreement it will be noted that the "humane treatment" of prisoners requires that they shall be protected "from acts of violence, ill-treatment, cruelties, personal insults and from public curiosity;" "against the inclemencies of the weather;" "against sickness, to the same extent as nationals of the captor state;" that they shall not be "treated as criminals;" that "prisoners of war shall be allowed to talk to each other;" that they "shall not be subjected to extreme heat or cold;" that such quantity and quality of wholesome food shall be provided "as is necessary to maintain unimpaired their normal physical health and working capacity;" that "dogs shall not be used as guards in the interior of prison camps, nor in guarding, working or exercising detachments unless they are in leash or are securely muzzled;" that they "shall be permitted to retain the clothing necessary for their personal use;" that they "shall neither be required to perform nor by menaces, threats or force coerced into volunteering to perform, any work directly related to the operations of the war;" that "all female personnel serving with the armed forces of either of the contracting parties shall, if captured, be given every possible protection against harsh treatment, insult or any manifestation of disrespect in any way related to their sex;" and many other provisions of a similar nature.

The Prisoners' Agreement also contains most explicit provisions governing the exercise of the duties undertaken by the neutral power designated to look after the interests of the captives by inspecting and reporting upon the conditions of their captivity; which work, as regards German prison camps, it will be remembered, was performed by American officials, prior to the breaking off of diplomatic relations between the United States and Germany.

Since, as a result of the conditions prevailing in some prisoners' camps during this war, it has been found necessary to enter into an agreement containing the provisions embodied in this agreement regulating the treatment of prisoners, it would seem desirable that an agreement along these lines should be included in the conventions growing out of the Peace Conference, in order that, as a matter of recognized and codified international law, prisoners of war should have the full protection against abuses which have not been pre-

vented even by the enlightened opinion of the twentieth century, as a safeguard in case a league of nations should not prove to be a complete and lasting barrier against future hostilities among nations. nations.

CHANDLER P. ANDERSON.

INTERNATIONAL PARTICIPATION IN COURTS-MARTIAL

Certain of the French Courts have, during the war, invited Belgian advocates to appear before them. Recently, however, a Frenchman was permitted to appear in a court-martial in France upon a case conducted by American authorities. The matter related to several counts against a neutral civilian employee who was with the American Army. The French advocate appeared for the neutral alien.

The French advocate reports that he was received with every courtesy and was given every opportunity to defend his client before the court which particularly impressed him by its effort to reach a just decision regardless of all technicalities. In a French paper mentioning this case, significant mention is made of the desirability of more extended interchange of legal representatives before the French and American tribunals. The article closes:

"May the future—the immediate future—see this wish realized and as in all the great confederation of the allies may there be only one justice, one law and one united defense and sanction."

G. G. W.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletín, bulletin, bolletino; *P. A. U.*, bulletin of the Pan American Union, Washington; *Cd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Privé, Paris; *Current History*—Current History—A Monthly Magazine of the New York *Times; Doc. dipl.*, France, Documents diplomatiques; *B. Rel. Ext.*, Boletín de Relaciones Exteriores; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémorial diplomatique, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista, revue, rivista; *R. pol. et parl.*, Revue Politique et Parlementaire; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats.*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

August, 1918.

27 GERMANY—RUSSIA. Treaty relative to Baku, etc., signed. *Current History, 9 (Pt. 1)*: 401.

October, 1918.

4 ARABS. Allied Governments formally recognize the belligerent status of Arab forces fighting with Allies against Turks in Palestine and Syria. *Current History, 9 (Pt. 2)*: 354.

4 BULGARIA. Czar Ferdinand abdicated in favor of his son Boris. *Current History, 9 (Pt. 2)*: 354.

5 RUSSIA. Abrogated the treaty of peace with Turkey. *Current History, 9 (Pt. 2)*: 354.

5 AUSTRIA-HUNGARY. Appealed to President Wilson to conclude an armistice immediately, and to start negotiations for peace. *Current History, 9 (Pt. 2)*: 354. *Official Bulletin*, No. 441, October 19, 1918.

6–8 GERMANY. Prince Maximilian of Baden sent note to President Wilson proposing a peace parley on President Wilson's

principles and asking for an armistice. On October 8, the President replied, calling for evacuation of invaded territory before an armistice could be asked. *Current History, 9 (Pt. 2)*: 354. Texts: *Official Bulletin,* No. 433, October 9, 1918.

8 TURKEY. Turkish emissaries sent to Allies from Smyrna to ask peace. *Current History, 9 (Pt. 2)*: 354. Official text of request for armistice: *Official Bulletin,* No. 436, October 14, 1918.

11 AUSTRIA-HUNGARY. Emperor Charles issued manifesto announcing decision to unite Croatia, Slavonia, Bosnia, and Herzegovina in one state. *Current History, 9 (Pt. 2)*: 354.

11 HUNGARY. Dr. Alexander Wekerle, Hungarian Prime Minister, resigned. *Current History, 9 (Pt. 2)*: 354.

12 TURKEY. Note from Turkey making peace offer. *Official Bulletin,* No. 436, October 14, 1918.

12 GERMANY. Answered American note of October 8, agreeing to terms, but asking for a mixed commission on the evacuation of invaded territory. *Current History, 9 (Pt. 2)*: 354. *Official Bulletin,* No. 437, October 15, 1918.

13 UNITED STATES—GERMANY. American reply to German note of October 12 declared there would be no armistice as long as German forces continued barbarities; that there would be no agreement with an autocratic government, and that the evacuation of invaded territory would be under the direction of the Allied military chiefs alone. *Current History, 9 (Pt. 2)*: 354. *Official Bulletin,* No. 437, October 15, 1918.

16 GERMANY. Prussian Diet withdrew opposition to equal franchise and Federal Council accepted proposed amendment to the constitution restricting the right of the Emperor to declare war and make treaties. *Current History, 9 (Pt. 2)*: 354.

16 POLAND. Great Britain recognized Polish National Army as autonomous, allied, and co-belligerent. *Current History, 9 (Pt. 2)*: 354.

17 HUNGARY. Proclamation read in Hungarian Parliament declaring Hungary a separate state. *Current History, 9 (Pt. 2)*: 354.

18 AUSTRIA. Proclamation made of organization of Austria on federated basis. *Current History, 9 (Pt. 2)*: 354.

18 CZECHO-SLOVAK NATION. Proclaimed its independence; Czechs seized Prague. *Current History, 9 (Pt. 2)*: 354. *Official Bulletin,* No. 441, October 19, 1918.

18 AUSTRIA. Baron Burian resigned as Austrian Premier. *Current History, 9 (Pt. 2)*: 354.

18 UNITED STATES—AUSTRIA. American reply to Austrian note of October 19 refused request, stating that the independence of the Czecho-Slovaks and Jugo-Slav nations had been recognized by the United States, and with these nations would rest the decision as to any terms proposed by Austria. *Current History, 9 (Pt. 2)*: 354. *Official Bulletin*, No. 441, October 19, 1918.

20 GERMANY—UNITED STATES. Third German note relative to peace text. *Current History, 9 (Pt. 1)*: 368. *Official Bulletin*, No. 444, October 23, 1918.

22 GERMAN-AUSTRIAN STATE. German-Austrian deputies in the Austrian Parliament issued declaration announcing creation of German-Austrian State. On October 30, this German-Austrian National Council sent a note to the United States with notification of formation of the State. On November 12, it was proclaimed a part of the German Republic. New York *Times*, October 23, November 13, 1918.

23 GERMANY—UNITED STATES. American answer to third German peace note (Oct. 20), text. *Current History, 9 (Pt. 1)*: 370. *Official Bulletin*, No. 445, October 24, 1918.

24 RUSSIA. Foreign Minister Tchitcherin sent note to President Wilson announcing readiness of Bolsheviki to conclude an armistice upon evacuation of occupied territory and asking when American troops would be withdrawn from Russia. *Current History, 9 (Pt. 2)*: 560.

27 GERMANY—UNITED STATES. Fourth German peace note. Text: *Current History, 9 (Pt. 1)*: 371. *Official Bulletin*, No. 449, October 29, 1918.

28 AUSTRIA-HUNGARY. Austrian note to Allies asking immediate negotiations without awaiting results of exchanges with Germany. Conceded all rights asked for Czecho-Slovaks and Jugo-Slavs, and asked for immediate cessation of hostilities. Text: *Current History, 9 (Pt. 1)*: 560. *Official Bulletin*, No. 451, October 31, 1918.

29 AUSTRIA—UNITED STATES. Austrian note asking immediate armistice. Text: *Current History, 9 (Pt. 1)*: 394. *Official Bulletin*, No. 451, October 31, 1918.

29 CZECHO-SLOVAK REPUBLIC. Czech National Council took over control of Prague on October 28. On October 29, the Republic was proclaimed. New York *Times*, October 30, 1918.

30 GERMANY. German note to United States telling of steps taken toward democratization of Germany. *Current History, 9 (Pt. 1)*: 561. *Official Bulletin*, No. 445, October 24, 1918.

30 TURKEY. Armistice signed to go into effect at noon, local time, October 31. Text, with additional clause: *Current History, 9 (Pt. 1)*: 399. *Official Bulletin*, No. 452, November 1, 1918 (no text).

30 AUSTRIA—ITALY. Italy informs Austria plea for armistice came too late. New York *Times*, October 30, 1918.

30 TURKEY. United States notifies Turkey that the request for armistice will be brought to the attention of nations at war with Turkey. New York *Times*, November 1, 1918. *Official Bulletin*, No. 452, November 1, 1918.

31 SUPREME WAR COUNCIL. Formal meetings began at Versailles. New York *Times*, November 1, 1918. *Official Bulletin*, No. 456, November 6, 1918.

31 SERBIA. The Kingdom of Greater Serbia proclaimed. Bosnia and Herzegovina incorporated themselves with the Kingdom. New York *Times*, November 1, 1918.

31 BOHEMIA. German-Bohemian Deputies proclaimed the independence of the State of German Bohemia and entered into negotiations with the Berlin Government with a view to joining German Austria to Germany. New York *Times*, November 1, 1918.

November, 1918.

1 AUSTRIA. General Diaz of Italian Army delivered armistice terms to Austria. New York *Times*, November 2, 1918.

1 AUSTRIA. Ex-Premier Tisza assassinated. New York *Times*, November 2, 1918.

1 GERMANY — AUSTRIA. Austria breaks off diplomatic relations with Berlin. New York *American*, November 2, 1918.

2 POLAND. The United States recognized the Polish Army as autonomous and co-belligerent. New York *Times*, November 5, 1918. *Official Bulletin*, No. 455, November 5, 1918.

2 BULGARIA. King Boris abdicated. A peasant government was established under the leadership of M. Stambuliwsky. New York *Times*, November 3, 1918.

3 AUSTRIA. Armistice signed with General Diaz, to go into effect at 3 o'clock, November 4. Text: *Current History, 9 (Pt. 1)*: 396. *Official Bulletin*, No. 454, November 4, 1918.

3 JUGO-SLAV REPUBLIC. Formation announced. New York *Times*, November 4, 1918.

5 GERMANY—UNITED STATES. United States notifies Germany that Allies are willing to arrange armistice on President Wilson's principles, and that terms can be obtained from Marshal Foch. Text: *Official Bulletin*, No. 456, November 6, 1918.

5 GERMANY—UNITED STATES. Final American answer to fourth German peace note (October 27). Text: *Current History, 9 (Pt. 1)*: 372. *Official Bulletin*, No. 456, November 6, 1918.

5 RUSSIA. Bolshevist Government handed neutral ministers a note for transmission to Entente nations asking for opening of peace negotiations. *Current History, 9 (Pt. 2)*: 560.

6 RUSSIA—GERMANY. Germany demanded withdrawal of all Russian representatives in Germany. *Current History, 9 (Pt. 2)*: 560.

6–8 GERMANY. German armistice delegation reached Allied lines on November 3, and Allied headquarters on November 8. New York *Times*, November 7, 1918. *Official Bulletin*, No. 459, November 9, 1918.

8 BAVARIA. Bavarian Diet passes decree deposing Wittelsbach dynasty. Bavarian Republic proclaimed. New York *Times*, November 9, 1918.

8 GERMANY. Prince Max of Baden resigned as Chancellor. Resignation not accepted. New York *Times*, November 9, 1918. Manifesto: *Official Bulletin*, No. 460, November 11, 1918.

9 GERMANY. The Kaiser abdicated. Prince Max of Baden was named Regent of the Empire; Friedrich Ebert was appointed Chancellor. Formal abdication of the Kaiser was dated November 28. New York *Times*, November 9, 1918. *Official Bulletin*, No. 460, November 11, 1918.

9 BRUNSWICK. The Duke of Brunswick and his successor abdicated. New York *Times*, November 10, 1918.

10 WÜRTTEMBERG. The King of Württemberg abdicated. New York *Times*, November 11, 1918.

11 GERMANY. The Entente Allies and the United States. Armistice signed at 5 a.m., French time. Text: *Current History, 9 (Pt. 1)*: 363. *Official Bulletin*, No. 460, November 11, 1918.

11 MECKLENBURG-SCHWERIN. The Grand Duke abdicated. New York *Times*, November 12, 1918.

11 OLDENBURG. The Grand Duke of Oldenburg was dethroned. New York *Times*, November 12, 1918.

11 SAXONY. King Friedrich August abdicated. New York *Times*, November 12, 1918.

11 or 13 AUSTRIA-HUNGARY. Emperor Charles abdicated as Emperor. Text: *Current History, 9 (Pt. 1)*: 398.

12 GERMANY. Revised text of armistice announced. Text: *Official Bulletin*, No. 462, November 13, 1918.

12 ROUMANIA. The new Roumanian Government declared war on Germany. New York *Times*, November 13, 1918.

13 GERMANY. Appealed to the United States for food. Texts of appeal and reply of United States: *Official Bulletin*, No. 462, November 13, 1918.

13 ALSACE-LORRAINE. Members of the Second Chamber of Alsace-Lorraine constituted themselves into a National Council. New York *Times*, November 14, 1918.

13 HESSE. Republic proclaimed. New York *Times*, November 14, 1918.

13 WÜRTTEMBERG. Republic proclaimed. New York *Times*, November 14, 1918.

13 LIPPE-DETMOLD. Prince Leopold abdicated. New York *Times*, November 14, 1918.

13 SAXE-WEIMAR. Grand Duke William abdicated. New York *Times*, November 14, 1918.

28 GERMANY. Formal abdication by William II of rights to the crown of Prussia and Germany. Text: New York *Times*, December 1, 1918. *Official Bulletin*, No. 460, November 11, 1918.

December, 1918.

1 ROUMANIA. The National Roumanian Council of Transylvania proclaimed union with the Kingdom of Roumania. New York *Times*, December 8, 1918. Summary of proclamation: New York *Times*, December 11, 1918.

1 Former Crown Prince Wilhelm renounced his rights to the crown of Prussia and Germany. Text: New York *Times*, December 7, 1918.

4 President Wilson sailed for Europe; arrived at Brest December 13, 1918. New York *Times*, December 5, 1918. *Official Bulletin*, No. 479, December 4, 1918.

4 FRANCE. Certain trade treaties abrogated. New York *Times*, December 5, 1918.

4 PERU—CHILE. Bolivia offers her services to Peru in the dispute with Chile. Washington *Post*, December 5, 1918.

4 BULGARIA. Premier Malinoff resigned and was succeeded by M. Monchanoff. New York *Times*, December 5, 1918.

4 POLAND—GERMANY. Poland issued ultimatum to Germany demanding withdrawal of German troops. New York *Times*, December 5, 1918.

5 GERMANY. United States Army refuses to recognize authority of German Soviets over German officials. Washington *Post*, December 6, 1918.

6 GERMANY. Crown Prince renounced his right to throne. New York *Herald*, December 7, 1918.

6 GERMANY. The Crown Prince renounced his right to the German throne. Text: New York *Times*, December 7, 1918.

6 BADEN. Southern Baden announces desire to join Switzerland. New York *American*, December 7, 1918.

6 BADEN. Reported that Southern Baden is seeking to join Switzerland. New York *American*, December 7, 1918.

6 CHILE—GREAT BRITAIN. Chile suggests that Great Britain return Chilean ships requisitioned at beginning of war. Washington *Herald*, December 7, 1918.

6 BELGIUM. King of Belgium and French Premier agree Belgium's status must be changed. New York *Times*, December 7, 1918.

6 KOREA—JAPAN. Koreans appeal to the United States for help to effect a separation from Japan. New York *Times*, December 7, 1918.

7 SWEDEN—RUSSIA. Sweden recalls diplomatic and consular officers in Russia. New York *Times*, December 8, 1918. *Official Bulletin*, No. 487, December 13, 1918.

7 UNITED STATES—ARMENIA. The United States declines to recognize new Armenian Republic. New York *Times*, December 8, 1918.

7 UNITED STATES—PERU—CHILE. President Wilson tenders the mediation of the United States in the Tacna-Arica question. El Diario Ilustrado (Santiago), December 8, 9, 1918.

8 SWEDEN—RUSSIA. Sweden recalls her diplomatic and consular representatives in Russia. New York *Times*, December 9, 1918. *Official Bulletin*, No. 487, December 13, 1918.

8 SWEDEN—RUSSIA. Sweden recalls her diplomatic and consular representatives in Russia. Washington *Post*, December 9, 1918. *Official Bulletin*, No. 487, December 13, 1918.

9 ESTHONIA. German Government recognized the Republic of Esthonia. Washington *Post*, December 10, 1918.

9 SCHLESWIG-HOLSTEIN. Announcement that Schleswig-Holstein will be a republic. New York *Tribune*, December 10, 1918.

9 CENTRAL POWERS. Again ask the United States to intercede in their behalf. Are told to address such requests to all the Allies. New York *Times*, December 10, 1918. *Official Bulletin*, No. 484, December 10, 1918.

9 PERU—CHILE. Peru accepts the United States as mediator in the dispute with Chile. New York *Times*, December 10, 1918.

11 GERMANY. Dr. Solf, minister for foreign affairs, resigned. New York *Times*, December 17, 1918.

12 SWITZERLAND. Gustave Ador elected President of Swiss Republic. New York *Times*, December 12, 1918.

12 HESSE. The "People's Council for Republic of Hesse" replaced the Hessian Workman's, Peasants' and Soldiers' Council. New York *Herald*, December 12, 1918.

12 UNITED STATES. Asks Latin American countries to join in urging amicable settlement between Peru and Chile. New York *World*, December 13, 1918.

12 GERMANY. Dr. Solf, minister for foreign affairs, resigned. New York *Times*, December 13, 1918.

12 PEACE CONFERENCE. Announced that the Conference would begin January 3, 1919. New York *Tribune*, December 13, 1918.

12 PERU—CHILE. United States presented notes to Chile and Peru, pleading for peace in South America. Washington *Post*, December 13, 1918. *Official Bulletin*, No. 486, December 12, 1918.

12 NORWAY—RUSSIA. Norwegian Legation left Petrograd. Washington *Post*, December 13, 1918. *Official Bulletin*, No. 491, December 18, 1918.

13 NORWAY. Asks admission to Peace Conference discussion of League of Nations. New York *Times*, December 14, 1918.

13 German armistice extended to 5 a.m., January 17, 1919. New York *Times*, December 15, 1918. *Official Bulletin*, No. 488, December 14, 1918.

13 FRANCE. President Wilson lands at Brest. New York *Times*, December 14, 1918. *Official Bulletin*, No. 487, December 13, 1918.

13 NORWAY—RUSSIA. Norwegian Legation left Petrograd. New York *Times*, December 13, 1918. *Official Bulletin*, No. 491, December 18, 1918.

14 NORWAY. Asks a voice in framing a league of nations. New York *Herald*, December 15, 1918.

14 Armistice extended to January 17, 1919. New York *Times*, December 15, 1918. *Official Bulletin*, No. 488, December 18, 1918.

14 GERMANY. Swiss Legation asked for official information as to date and place of formal Peace Conference. New York *Times*, December 15, 1918. *Official Bulletin*, No. 488, December 14, 1918.

15 Marshal Foch refuses to recognize the Soldiers' and Workmen's Councils in Germany. *World*, December 16, 1918.

15 Summary of armistice extension. *World*, December 16, 1918.

15 BOHEMIA—MORAVIA—SILESIA. Austria asks self-determination for these nations. Washington *Post*, December 16, 1918.

15 PORTUGAL. President Sidonio Pais was assassinated. New York *Times*, December 16, 1918. *Official Bulletin*, No. 489, December 16, 1918.

15 MEXICO—UNITED STATES. American sailors kill one Mexican and wound another while rescuing a comrade in Tampico. New York *Times*, December 16, 1918. *Official Bulletin*, No. 489, December 16, 1918.

16 MONTENEGRO. Denies deposing its King. New York *American*, December 17, 1918. *Official Bulletin*, No. 490, December 17, 1918.

16 UKRANIA. The Hetman of Ukrania forced to abdicate. New York *Herald*, December 17, 1918.

16 POLAND—GERMANY. Poland severs relations with Germany. New York *Times*, December 17, 1918.

16 POLAND. Asks Allied recognition. New York *Times*, December 17, 1918.

21 LUXEMBURG—GERMANY. K. von Busch, German Minister to Luxemburg since March, 1914, expelled with his legation. New York *Times*, December 22, 1918.

22 CZECHO-SLOVAK REPUBLIC. Prof. T. A. Masaryk took oath of office as President at Prague. New York *Times*, December 23, 1918.

24 PORTUGAL. New Portuguese Ministry announced. New York *Times*, December 26, 1918.

27 GERMANY—POLAND. Poland issued ultimatum to Germany demanding right of passage of Polish troops over German-held railways to Vilna. New York *Times*, December 28.

29 GERMANY. Foreign Minister Haase resigned and is succeeded by Philip Scheidemann. New York *Times*, December 30, 1918.

30 GERMANY. Philip Scheidemann succeeded Hugo Haase as Minister of Foreign Affairs. Personnel of cabinet. New York *Times*, December 31, 1918.

KATHRYN SELLERS.

GREAT BRITAIN [1]

Aliens' Restriction Order. Order in Council further amending the. Oct. 23, 1918. (St. R. & O. 1918, No. 1356.)

———. Order in Council further amending the. Nov. 25, 1918. (St. R. & O. 1918, No. 1549.)

Armistice. Conditions of an Armistice with Germany, signed Nov. 11, 1918 (Cd. 9212). 4d.

Austro-Hungarian Government. Note addressed Sept., 1918, by the Austro-Hungarian Government to the Governments of all the Belligerent States proposing conversations of a confidential and non-binding character respecting the fundamental principles for the conclusion of peace. Miscellaneous, No. 21. (1918.) (Cd. 9148.) 2d.

British Nationality and Status of Aliens. The Naturalization Regulations, Dec. 30, 1914, as amended Oct. 23, 1918. (St. R. & O. 1918, Nos. 1488, 1861.)

Currency and Foreign Exchange after the War. First Interim Report of Committee on. (Cd. 9182.) 3d.

Customs. Proclamation. Prohibition of Import. Sept. 27, 1918. (St. R. & O. 1918, No. 27; No. 1224.)

———. Proclamation. Prohibition of Import. Nov. 8, 1918. (St. R. & O. 1918, No. 28; No. 1462.)

Emigration. Correspondence as to the Emigration Bill. 1918. (Cd. 9173.) 2d.

German Colonies. Correspondence relating to the wishes of the Natives of the German Colonies as to their future government. (Cd. 9210.) 8d.

Hospital Ships. Circular despatch addressed to H. M. Diplomatic Representatives in Allied and Neutral Countries respecting the torpedoing by German submarines of the British Hospital Ships "Rewa,"

[1] Parliamentary and Official Publications of Great Britain may be obtained for the amount noted, from the Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

"Glenart Castle," "Guildford Castle" and "Llandovery Castle." Miscellaneous, No. 26 (1918). 4½d.

Imperial War Conference, 1918. Resolutions agreed to by the Conference; Extracts from Minutes of the Proceedings; and Papers laid before the Conference. (Cd. 9177.) 2s.6d.

Merchant Tonnage and the Submarine. Supplementary statement showing for the United Kingdom and for the world, for the period Aug., 1914, to Oct., 1918, merchant tonnage losses by enemy action and marine risk, merchant shipbuilding output, and enemy vessels captured and brought into service; with diagrams showing losses and output of merchant tonnage for the United Kingdom and for the world for each quarter up to Sept. 30, 1918. (Cd. 9221.) 3d.

Military Service. Order in Council, Sept. 27, 1918, under the Military Service Conventions with Allied States, Act 1917, signifying that a Convention, dated Aug. 8, 1918, has been made with Greece. (St. R. & O. No. 1225.)

Ministers. List of His Majesty's Ministers and Heads of Public Departments. Revised, Nov., 1918. 2½d.

Ministry of Shipping. Order, Oct. 18, 1918, made under sec. 11 (5) of the New Ministries and Secretaries Act, 1916, substituting the Shipping Controller for the Lords Commissioners of the Admiralty in the Agreements specific in the Schedule to this Order. (St. R. & O. 1918, No. 1421.)

Nitrate of Soda. Memorandum of Agreement between the Chilean Government and the Nitrate of Soda Executive for the sale and purchase of Nitrate of Soda. Miscellaneous, No. 22 (1918). (Cd. 9149.) 1½d.

Parcel Post. Foreign and Colonial Parcel Post Amendment (No. 85) warrant, Aug. 27, 1918. Costa Rica. (St. R. & O. No. 1239.)

———. Foreign and Colonial Parcel Post Amendment (No. 86) Warrant, Nov. 22, 1918. (St. R. & O. No. 1544.)

Prisoners of War. Agreement between the British and German Governments concerning Combatant Prisoners of War and Civilians. Miscellaneous, No. 20 (1918). (Cd. 9147.) 4½d.

———. Report on the Treatment by the Germans of Prisoners of War taken during the Spring Offensives of 1918. Miscellaneous, No. 19 (1918). (Cd. 9106.) 3d. Further report on same. Miscellaneous, No. 27 (1918). 3d.

———. Report on the Employment in Coal and Salt Mines of

the British Prisoners of War in Germany. Miscellaneous, No. 23 (1918). (Cd. 9150.) 2d.

Prisoners of War. Report on the Treatment by the Enemy of British Officers, Prisoners of War in Camps under the 10th (Hanover) Army Corps, up to March, 1918. Miscellaneous, No. 28 (1918). 3d.

———. Report on the Treatment of British Prisoners of War in Turkey. Miscellaneous, No. 24 (1918). (Cd. 9208.) 4½d.

Russia. Despatches from His Majesty's Consul General at Moscow, Aug. 5 to 9, 1918. Miscellaneous, No. 30 (1918). 2d.

Termination of the Present War. (Definition.) Bill to make provision for determining the date of the termination of the Present War, and for purposes connected therewith. (H. L. 1918, Nos. 144 and 144a.) Each 1½d. (H. C. 1918, No. 115.) 1½d.

Trade. Interim Report of Committee on Commercial and Industrial Policy regarding importation of goods from the present enemy countries after the war. (Cd. 9033.)

———. Interim report of Committee on Commercial and Industrial policy on the treatment of exports from the United Kingdom and British overseas possessions and the conservation of the resources of the Empire during transitional period after the war. (Cd. 9034.)

———. Final Report of Committee on Commercial and Industrial Policy on policy after the war. (Cd. 9035.)

Trading with the Enemy. (Statutory List.) Proclamation, together with the consolidated Statutory List of Persons and Firms in Countries, other than Enemy Countries, with whom persons and firms in the United Kingdom are prohibited from trading. With notes for British merchants engaged in foreign trade. Complete to Nov. 15, 1918. No. 68a. 8½d.

———. Enemy Banking Business Rules, Dec. 8, 1918, made under sec. 2 (4) of the Trading with the Enemy (amendment) Act, 1918. (St. R. & O. No. 1649.)

Treaty. Between Great Britain and Greece respecting the liability to military service of British subjects in Greece and Greek subjects in Great Britain. Miscellaneous, No. 16, 1918. (Cd. 9103.)

Treaty of Peace between Germany and Finland, together with Commercial and Shipping Agreements signed March 7, 1918. Miscellaneous, No. 29 (1918). 2d.

———. Between Central Powers and Ukrainian People's Re-

public, together with the supplementary treaty thereto, signed at Brest-Litovsk, February 9, 1918. Miscellaneous, No. 18 (1918). (Cd. 9105.) 2d.

UNITED STATES [2]

Alien Enemies. Proclamation abrogating, annulling, and rescinding certain regulations prescribing the conduct of alien enemies. December 23, 1918. 1 p. (No. 1506.) *State Dept.*

Alien Property. Executive order concerning certain sales to be conducted by Alien Property Custodian pursuant to trading with the enemy act and amendments thereof, relating to seats upon or membership in any stock, cotton, grain, produce or other exchange. Sept. 13, 1918. 1 p. (No. 2955.) *State Dept.*

Alien Property Custodian. Executive order vesting power and authority in a designated official (managing director of Alien Property Custodian in Philippine Islands) or his successors in office, subject to supervision of Alien Property Custodian. Sept. 13, 1918. 1 p. (No. 2959.) *State Dept.*

Aliens. Joint resolution authorizing readmission to United States of certain aliens who have been conscripted or have volunteered for service with military forces of United States or cobelligerent forces. Approved Oct. 19, 1918. 1 p. (Public resolution 44.)

Anarchists. Act to exclude and expel from United States aliens who are members of anarchistic and similar classes. Approved Oct. 16, 1918. 1 p. (Public 221.)

Arbitration. Agreement between United States and Great Britain, extending duration of convention of April 4, 1908; signed, Washington, June 3, 1918; proclaimed Sept. 30, 1918. 4 p. (Treaty series, 635.) *State Dept.*

Armistice. Terms of armistice signed by Germany, address of President to joint session of Congress, Nov. 11, 1918. 11 p. (H. doc. 1339.)

Army. Report on bill amending act to give indemnity for damages caused by American forces abroad so as to provide for prompt settlement of debts of deceased members of expeditionary forces. Oct. 10, 1918. 2 p. (S. rp. 589.)

———. Regulations for Army, 1913; corrected to April 15, 1917. 1918 [reprint with additions]. (War Dept. doc. 454.) Cloth, 60c.

[2] Where prices are given, the document in question may be obtained for the amount noted, from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Birds. Proclamation of amendments of and additions to migratory birds treaty act regulations, Oct. 25, 1918. 3 p. (No. 1490.) *State Dept.*

Cables, Submarine. Executive order, censorship of submarine cables, telegraph and telephone lines [amending Executive order of April 28, 1917, so as to include points on or near Mexican border]. Sept. 26, 1918. 1 p. (No. 2967.) *State Dept.*

———. Proclamation taking possession and control of marine cable systems. Nov. 2, 1918. 2 p. (No. 1492A.) *State Dept.*

Consular courts. Regulations for United States consular courts in China, with set of court forms used in American consular court at Shanghai, and act of July 1, 1870. 1918. 64 p. *State Dept.*

Copyright law of United States, act of March 4, 1909, in force July 1, 1909, as amended by acts of August 24, 1912, March 2, 1913, and March 28, 1914; with rules for practice and procedure under sec. 25, by Supreme Court. Edition of August, 1918. 80 p. (Bulletin 14.) *Library of Congress.* Paper, 10c.

Courts-martial. Manual for courts-martial, courts of inquiry, and of other procedure under military law. Revised edition corrected to Aug. 1, 1918. 1918. (War Dept. doc. 560.) Cloth, 65c.

Defensive Sea Areas. Executive Order revoking all Executive Orders heretofore issued for the establishment of. Jan. 25, 1919. (No. 3027.) *State Dept.*

Diplomatic and Consular Service. Diplomatic and consular service of United States, corrected to Aug. 31, 1918. 45 p. *State Dept.*

Economic Reconstruction. Analysis of main tendencies in principal belligerent countries of Europe, with statistics of production, consumption, and trade in important foodstuffs and industrial raw materials. 1918. 74 p. (Miscellaneous series, 73.) *Foreign and Domestic Commerce Bureau.* Paper, 10c.

Europe. Strategic map of central Europe showing international frontiers. 1918. 30c.

Exports. Conservation list effective Jan. 16, 1919, supersedes all previous export conservation lists. *War Trade Board.*

German-Bolshevik Conspiracy. Oct., 1918. 30 p. (War Information series 20.) *Public Information Committee.*

German East Africa. Black slaves of Prussia, letter to Lieut. Gen. J. C. Smuts relative to German rule in East Africa, by Frank Weston, Bishop of Zanzibar. 1918. 14 p. (S. doc. 296.)

Germany. Germany's confession, Lichnowsky memorandum. 1918. *Public Information Committee.*

Great War, 1914. Check list of literature and other material in Library of Congress on European War. 1918. 293 p. *Library of Congress.* Paper, 30c.

———. Spirit of coming era; address by Secretary of State, Oct. 10, 1918. 9 p. *State Dept.*

Greeks in United States. Act to authorize payment of indemnities to Greece for injuries inflicted on its nationals during riots occurring in South Omaha, Neb., Feb. 21, 1909. Approved Aug. 30, 1918. 1 p. (Public 212.)

Hungary. Affairs of Hungary, 1849–50; message from President of United States transmitting in response to Senate resolution of Dec. 7, 1909 [March 22, 1850], correspondence with A. Dudley Mann (1849–50), relating to affairs in Hungary, also additional papers transmitted by Secretary of State Robert Lansing to Senator Lodge on Sept. 10, 1918, relating to same subject. 1918. 64 p. (S. doc. 282.)

Inland Waterways. In response to resolution, report on commercial advantages of ship canals connecting Lake Erie and Lake Ontario, and Lake Ontario and Hudson River, with bibliography. 1918. 16 p. (S. doc. 301.) *Commerce Dept.*

Investments in Latin America and British West Indies, by Frederic M. Halsey. 1918. 544 p. (Special Agents' Series, 169.) *Foreign and Domestic Commerce Bureau.* Paper, 50c.

Licenses. Proclamation cancelling regulations requiring licenses for importation, etc., of certain food commodities. Jan. 7, 1919. (No. 1506-A.) *State Dept.*

———. Regulation 17 governing salt-water fishermen, contains all general and special rules issued up to Nov. 13, 1918, which affect salt-water fishermen catching and selling salt water fish, shellfish and crustaceans. Nov. 13, 1918. 16 p. *Food administration.*

Military service. Convention providing for reciprocal military service with France; signed, Washington, Sept. 3, 1918. 2 p. *State Dept.*

———. Convention providing for reciprocal military service with Greece; signed, Washington, Aug. 30, 1918. 3 p. *State Dept.*

Neutrality. Laws of neutrality as existing on Aug. 1, 1914. May, 1918. 578 p. *State Dept.* Paper, 35c.

Passports. Proclamation governing issuance of passports and granting of permits to depart from and enter United States, Aug. 8, 1918; Executive order, rules and regulations vesting power and authority in designated officers and making rules and regulations supplemental to proclamation of Aug. 8, 1918, governing departure from and entry into United States, Aug. 8, 1918. 56 p. *State Dept.*

Shipping. Executive order delegating to the United States Shipping Board certain powers relating to ocean freight rates and terminal charges. Dec. 3, 1918. 1 p. (No. 3017.) *State Dept.*

———. Hearing on bill for regulation of ocean freight rates, requisitioning of vessels and increasing powers of Shipping Board, Sept. 20, 1918. 160 p. *Commerce Committee.*

Trading with the Enemy. Executive order vesting power and authority in designated officers under Trading with the Enemy Act. Dec. 3, 1918. 2 p. (No. 3016.) *State Dept.*

———. Report on bill to amend act to define, regulate and punish trading with the enemy so as to insure permanence of licenses granted by American manufacturers of patented articles under this act. Nov. 21, 1918. 2 p. (S. rp. 612.) *Commerce Committee.*

———. Enemy trading list, No. 3, revised to Dec. 13, 1918, superseding all previous lists, supplements and announcements. *War Trade Board.*

———. Supplement, No. 1, to enemy trading list (revised), covering additions, removals and corrections to Jan. 24, 1919. *War Trade Board.*

H. K. THOMPSON.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

EX PARTE LARRUCEA ET AL.

District Court, Southern District of California

October 6, 1917

[249 Fed. Rep. 981]

BLEDSOE, District Judge. Pursuant to petitions filed, an order to show cause why writs of habeas corpus should not issue was entered. Upon the hearing it developed that the above-named petitioner, with three of his countrymen, are citizens of the kingdom of Spain; for some years they have been domiciled within the United States, and each of them has heretofore filed his declaration of intention to become a citizen of the United States under the naturalization laws thereof; they were arrested off the shore of Mexico by a United States war vessel and are now detained under appropriate process by the marshal of the district as for evading the Conscription Act hereinafter referred to.

Petitioners claim that when taken into custody they were proceeding on their way to Spain. There is no issue as to the facts, and the single question presented is whether or not the petitioners are subject to the provisions of the Conscription Law. Their claim in that belief is that, owing to a treaty between Spain and the United States, they are exempt from all forms of compulsory military service in the United States, and under the undoubted law of nations had the right, in spite of the Conscription Law, to leave the United States and return to the land of their nativity. Moore, International Law Digest, vol. 4, page 52.

The existing treaty between Spain and the United States, proclaimed April 20, 1903, provides in article 5 (33 Stat. 2108):

> The citizens or subjects of each of the high contracting parties shall be exempt in the territories of the other from all compulsory military service by land or sea, and from all pecuniary contributions in lieu of such, as well as from all obligatory official functions whatsoever. Malloy's Treaties and Conventions, vol. 2, page 1701.

The claims of petitioners are resisted by the Government of the United States on the ground that the Conscription Law provides in express terms for their subjection to compulsory military service, and that, being later in date than the treaty with Spain, it controls, and that, in consequence, they should be remanded for trial. With this contention, upon a careful reading of the law, I am constrained to concur.

[1] Article 6 of the federal Constitution provides that:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land.

It has long been the rule of decision in the United States, however, that in so far as the judicial department of the Government is concerned a treaty occupies no position of superiority over an act of Congress. They are on a parity in so far as the provisions of the Constitution are concerned, and, like other expressions of the legislative will, when inconsistent or irreconcilable, the latest in point of time must control. Cherokee Tobacco Cases, 11 Wall. 616, 621, 20 L. Ed. 227; Head Money Cases, 112 U. S. 580, 598, 5 Sup. Ct. 247, 28 L. Ed. 798. In the event, then, of a conflict between an earlier treaty and a later act of Congress, the Courts are bound to accord to the act of Congress compelling authority, and remit one who claims rights or privileges under the treaty, which are denied to him by the act of Congress, to the political department of the Government. Tobacco Cases, *supra*. In other words, in such an exigency, if the country with whom the treaty has been ratified is dissatisfied with the action of the legislative department of our Government, it may present its complaint to the executive head thereof, and take such other measures as it may deem necessary for the protection of its interests. The courts thereof, however, which are bound to act in conformity with the constitutional mandates of Congress, can afford no redress. *Whitney* v. *Robertson*, 124 U. S. 194, 8 Sup. Ct. 456, 31 L. Ed. 386.

[2] The Conscription or Selective Draft Law, being the act "to authorize the President to increase temporarily the military establishment of the United States," approved May 18, 1917, "in view of the existing emergency, which demands the raising of troops in addition to those now available," and authorizing the organizing

and equipping of more than a million men under arms by selective draft, provided in Section 2 thereof that:

> Such draft as herein provided shall be based upon liability to military service of all male citizens, or male persons not alien enemies, who have declared their intention to become citizens, between the ages of 21 and 30 years, both inclusive.

In Section 4 certain federal, state, and other officers, ministers of religion, theological students, and members of the military and naval service of the United States are declared exempt; and it is also stated that nothing in the act contained shall be construed to require or compel the service of any member of a well-recognized religious sect, whose religious convictions are against war, etc. Provision is also made for partial exemption of other named classes. Section 5 provided that:

> All male persons between the ages of 21 and 30, both inclusive, shall be subject to registration in accordance with regulations to be prescribed by the President; and upon proclamation by the President or other public notice given by him or his direction stating the time and place of such registration it shall be the duty of all persons of the designated ages, except officers and enlisted men in the regular army, the navy, and the National Guard and Naval Militia, while in the service of the United States, to present themselves for and submit to registration under the provisions of this act: . . . Provided further, that persons shall be subject to registration as herein provided who shall have attained their twenty-first birthday and who shall not have attained their thirty-first birthday on or before the day set for the registration, *and all persons so registered shall be and remain subject to draft into the forces hereby authorized, unless exempt or excused therefrom as in this act provided.* (Italics supplied.)

Section 14, the concluding section of the act, is to the effect that:

> All laws and parts of laws in conflict with the provisions of this act are hereby suspended during the period of this emergency.

No provision is made anywhere in the act for positive exemptions from service other than those referred to; and no mention at all is made of any exemption because of treaties with any foreign nation. The language of the act requiring all male persons between the stated ages to register and providing that all persons so registered shall be and remain subject to draft "unless exempted or excused therefrom *as in this act provided,*" makes it impossible for me to conclude that

it was intended by the act to exempt citizens of Spain or of other countries possessing similar treaty rights.

The particular claim is made by the petitioners that the language of Section 2, to the effect that the draft "shall be based upon *liability* to *military service,*" is conclusive of an intent upon the part of Congress in the passage of this act to exclude from the operation of the act those who were not liable to military service because of some treaty provisions. It is perhaps difficult to appreciate just exactly what Congress had in mind in the use of the phrase "liability to military service"; there being no general law to which my attention has been called definitely establishing and fixing "liability to military service" under the laws of the United States. It has been the attitude of our State Department, from the time of Mr. Madison, when he was Secretary thereof, that resident aliens not naturalized are not liable to perform military service. Moore, International Law Digest, vol. 4, pages 51 to 65. Of course, the execution of a mere "declaration of intention" does not constitute naturalization. Moore's Digest, vol. 3, p. 336. The Congress, in the Draft Law of 1863 (Act March 3, 1863, c. 75, 12 Stat. 731), however enacted:

> That all able-bodied male citizens of the United States, and *persons of foreign birth who shall have declared their intention to become citizens* under and pursuant to the laws thereof, between the ages of 20 and 45 years, except as hereinafter excepted, are hereby declared to constitute the national forces and shall be liable to perform military duty in the United States when ordered out by the President for that purpose.

By Act April 22, 1898 (30 Stat. 361, c. 187, § 1 [Comp. St. 1916, § 1714]) it was provided:

> That all able-bodied male citizens of the United States, and *persons of foreign birth who shall have declared their intention to become citizens of the United States* under and in pursuance of the laws thereof, between the ages of 18 and 45 years, are hereby declared to constitute the national forces, and, with such exceptions and under such conditions as may be prescribed by law, shall be liable to perform military duty in the service of the United States.

By the terms of the act passed January 21, 1903, which was subsequent to the negotiation of the treaty with Spain, though prior to its ratification or promulgation, it was provided that the militia should consist of "every able-bodied male citizen," and every "*able-bodied male of foreign birth who has declared his intention to become*

a citizen," between the ages of 18 and 45. 32 Stat. 775, c. 196. It may have been that the phrase "liability to military service" was borrowed from the previous acts. It would seem as if the present Draft Act were in completest harmony with other military service statutes in that behalf. Be that as it may, however, the act does provide in express terms that the draft shall be based upon liability to military service of all male citizens and all male persons not alien enemies who have *declared* their intention to become citizens, and, as above recited, contains the further provision that of all persons registered none shall be exempt from service, unless exempt or excused "as in the act provided." The language seems indicative of such a "positive repugnancy" (*Chew Heong* v. *United States,* 112 U. S. 536, 549, 5 Sup. Ct. 255, 28 L. Ed. 770) to the terms of the treaty with Spain as to leave no room for the conclusion that they can be read together, and that Congress was intending that citizens of Spain, as well as of other countries, who had declared their intention of becoming citizens of the United States under the naturalization laws, should be subject to the demands of the emergency. The conclusion here announced is confirmed in a degree by the concluding section of the act, suspending all laws in conflict with it during the period of the emergency.

It follows that the court, conceiving it to be its duty to follow the intent of Congress, must needs remand the petitioners to such relief as may be accorded to them by the political department of the Government. The order to show cause is discharged, and the writs petitioned for are denied.

SWAYNE AND HOYT, INC. v. EVERETT

United States Circuit Court of Appeals, Ninth District

January 6, 1919.

Ross, Circuit Judge. This case comes here from the United States Court for China. It is a writ of error sued out by the defendant to an action there brought by the present defendant in error to recover damages for the refusal of the plaintiff in error, a common carrier, to receive, without lawful excuse, certain cargo offered it by the plaintiff to the action for shipment from Shanghai by the steamer

Yucatan, which had been advertised to be on the berth at Shanghai for freight to San Francisco.

The facts are practically undisputed, and are, briefly, these:

Swayne & Hoyt was a California corporation having its principal place of business at San Francisco, and was therefore an American citizen, and was a common carrier of freight between the Orient and that city among other places. It had as its agent at Shanghai a British corporation styled Jardine, Matheson & Company, Limited, and had under charter the said steamship for a voyage from San Francisco to China and Japan and return to San Francisco and other Pacific coast ports of the United States.

Prior to the arrival of the *Yucatan* at Shanghai the plaintiff in the case applied to the agent of the defendant thereto for space in the ship in which to ship certain goods, in response to which application, after one denial of it, the agent agreed to provide the requested space upon condition that the application be approved by the British Consul at Shanghai. That conditional acceptance was refused. The cargo offered for shipment by the plaintiff was being handled by him for German subjects, by reason of which fact he was blacklisted by the British Government, and all British subjects, including the agent of the defendant corporation, inhibited from dealing with the plaintiff respecting this particular shipment as well as all other such shipments. The defendant through its British agent having refused to accept the cargo offered by Everett, the action was brought, resulting in the judgment of the court below in his favor for $2,720.20, with costs.

But two questions of law are involved, first, whether the court below had jurisdiction of the subject-matter of the action, and, if so, then secondly, its merits.

By Section 1 of the Act of June 30, 1906, creating the court below (34 Stat. Lg. 814), that court is given "Exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States consuls and ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by Section Two of this Act." The qualification specified in Section 2 of the Act has no bearing upon the present case, and, therefore, no further mention of it need be made.

At the time of the passage of the Act of June 30, 1906, there were in force the provisions of Sections 4083, 4084, and 4085 of the Revised

Statutes, by which certain judicial authority was conferred upon United States ministers and consuls in certain countries, including China, which jurisdiction embraced all controversies between citizens of the United States or others, provided for by its treaties.

The treaty with China bearing upon the present question was that of June 18th, 1858 (12 Stats. Lg., p. 1029), and conferred upon the United States the right to appoint consuls in various parts of China. Its XXVII Article is as follows:

> All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction and regulated by the authorities of their own government; and all controversies occurring in China between citizens of the United States and the subjects of any other government shall be regulated by the treaties existing between the United States and such governments, respectively, without interference on the part of China.

It is the contention of the plaintiff in error that the words "in China" in the foregoing Article qualify the word "citizens" and not the word "arising"; in other words, that a residence of the parties in China is essential to the existence of any jurisdiction in the court. We think it obvious that such a construction of the provision is wholly inadmissible, for the subject-matter thereby dealt with is *controversies arising in* China. The first clause of the provision relates to controversies in regard to rights, whether of property or person, there arising between citizens of the United States, and declares that they shall be subject to the jurisdiction and be regulated by the authorities of their own government; and by its second clause it is declared that all such controversies there arising between citizens of the United States and the subjects of any other government, shall be regulated by the treaties existing between the United States and such governments, respectively—in each instance without interference on the part of China. We regard it as clear that this is the very plain meaning of the article in question. As said by counsel for the defendant in error, the bare reading of its second clause is all that is necessary to show that the words "in China" there used, fixes, as the basis of the jurisdiction of the court, the place of the origin of the controversy, and not the residence of the parties thereto. No sound reason is suggested why a like construction should not be placed upon the first clause. To adopt the view urged by the plaintiff in error would be, in effect, to hold a consular court in China

vested with jurisdiction of a controversy between American citizens arising in the United States if they happened to be residents of China.

Upon the merits we think the case equally clear.

It does not admit of doubt that a common carrier, with certain well-established exceptions, is under legal obligation to carry the goods of any member of the public who may tender them for carriage. That such a carrier subject to such legal obligation may show that it was prevented from performing it by act of God or a public enemy, or by some other cause over which it had no control, is readily conceded, but in all such cases the defense is an affirmative one, and the burden is upon the carrier to both plead and prove it. 1 Michie on Carriers, Sec. 381; Chicago, etc. *R. R. Co.* v. *Wolcott,* 39 N. E. Rep. 451.

At the time of the occurrences in question, England and Germany were at war, but the United States was not; on the contrary, this country was then observing strict neutrality between those belligerents. How, then, can it be properly held that the performance of the clear legal duty of an American carrier to receive and transport goods tendered for carriage, by an American citizen, is excused on the ground that the British Government had forbidden its citizens and corporations, one of which happened to be the agent of the American carrier, from receiving the tendered freight and providing for its transportation? Such is not the law as we understand it. See, *Richards & Co., Inc.* v. *Wrechsner,* 156 N. Y. Supp. 1054, and the numerous cases there cited.

It is contended on behalf of the carrier that there was no evidence to show that it knew that its agent at Shanghai was inhibited by the British Government from shipping the goods of the plaintiff in time to have employed an agent not under such disability. Whether or not the carrier knew of the inhibition at all, or was apprised of it in time to have employed another agent, the fact remains that the agent it did appoint, acting within the scope of his employment, deprived the plaintiff of his legal right. For that wrong we think the carrier was properly adjudged liable, even assuming that it was ignorant of its agent's disability. See *Chesapeake & Ohio R. Co.* v. *Francisco,* 149 Ky. 307.

The judgment is affirmed.

THE STIGSTAD

Judicial Committee of the Privy Council. (Lord Sumner, Lord Parmoor, Lord Wrenbury, Lord Sterndale, and Sir Arthur Channell)

December 16, 1918

Appeal by neutrals from a judgment of the High Court of Admiralty (in prize) against their claim for damages for detention of vessel.

Lord Sumner, in moving that the appeal be dismissed, said:

The appellants in this case were claimants below. They are a Norwegian company which manages the steamship *Stigstad* for her owners, the *Klaveness Dampskibsaktieselskab*, a Norwegian corporation. While on a voyage, begun on April 10, 1915, from Kirkenes, Sydvaranger, in Norway, to Rotterdam, with iron-ore briquettes, the property of neutrals, she was stopped in lat. 56 deg. 9 min. N. and long. 6 deg. 6 min. E., about a day's sail from Rotterdam, by H.M.S. *Inconstant*, and was ordered to Leith and thence to Middlesborough to discharge. Their claim for "(1) freight, (2) detention, and (3) expenses consequent upon" this seizure and the discharge at Middlesborough afterward. The detention was measured by the number of days which elapsed between the expected date of completing discharge at Rotterdam and the actual date of completing discharge at Middlesborough, calculated at the chartered rate for detention, viz., £130 per day; and as to the expenses, while willing to treat port dues and expenses at Middlesborough as the equivalent of those which would have been incurred at Rotterdam, the owners claimed some port dues and expenses at Leith and a few guineas for special agency expenses at Middlesborough. Eventually the cargo was sold by consent, and a sum, the amount of which was agreed between the parties, was ordered to be paid out of the proceeds to the claimants for freight; but the late Sir Samuel Evans dismissed the claims for detention and for the special expenses. It is against his decree that the claimants have now appealed. They have admitted throughout that, in fact, the cargo of iron-ore briquettes was to be discharged into Rhine barges at Rotterdam in order to be conveyed into Germany.

The cargo was shipped by the *Aktieselskab Sydvaranger*, of

Kirkenes, and was to be delivered to V. V. W. Van Drich and Stoomboot en Transport on der Nemingen, both neutrals, but it is contended that Section 3 of the Order in Council, dated March 11, 1915, warranted interference with the ship and her cargo by his Majesty's Navy on the voyage to Rotterdam. The President's directions as to freight were that "the fair freight must be paid to them, having regard to the work which they did," the principle which he had laid down in the *Juno* (1 Trehern 151) being, in his opinion, applicable. The claim for detention is in truth a claim for damages for interfering with the completion of the chartered voyage, for it is admitted that delivery was taken at Middlesborough with reasonable dispatch. That part of the claim which relates to the ship's being ordered to call at Leith, and the claim for expenses incurred there, are claims for damages for putting in force the above-named Order in Council, for it is not suggested that the order to call at Leith and thence to proceed to Middlesborough was in itself an unreasonable way of exercising the powers given by the Order. The small claim for fees at Middlesborough seems to relate to an outlay incident to the earning of the freight which has been paid, and was covered by it, but, if it is anything else, it also is a claim for damages of the same kind. "Damages" is the word used by the President in his judgment, and, although it was avoided and deprecated in argument before their Lordships, there can be no doubt that it and no other word is the right word to describe the nature of the claims under appeal.

It is impossible to find in the express words of the Order any language which directs that such damages should be allowed, nor are the principles applicable which have been followed in the *Anna Catharina* (6 Ch. Rob. 10) and elsewhere as to allowance of freight and expenses to neutral ships, whatever be the exact scope and application of those cases. Again, with the fullest recognition of the rights of neutral ships, it is impossible to say that owners of such ships can claim damages from a belligerent for putting into force such an Order in Council as that of March 11, 1915, if the order be valid. The neutral exercising his trading rights on the high seas and the belligerent exercising on the high seas rights given him by Order in Council or equivalent procedure, are each in the enjoyment and exercise of equal rights, and, without an express provision in the order to that effect, the belligerent does not exercise his rights

subject to overriding right in the neutral. The claimant's real contention is, and is only, that the Order in Council is contrary to international law and is invalid.

Upon this subject two passages in the *Zamora* (1916 2 A. C., 77) are in point. The first is at page 95, and relates to Sir William Scott's decision in the *Fox* (Edw., 311):

> The decision proceeded upon the principle that, where there is just cause for retaliation, neutrals may by the law of nations be required to submit to inconvenience from the act of a belligerent Power greater in degree than would be justified had no just cause for retaliation arisen, a principle which had already been laid down in the *Lucy*.

Further, at page 98, are the words:

> An order authorizing reprisals will be conclusive as to the facts which are recited as showing that a case for reprisals exists, and will have due weight as showing what, in the opinion of his Majesty's advisers, are the best or only means of meeting the emergency; but this will not preclude the right of any party aggrieved to contend, or the right of the Court to hold that these means are unlawful as entailing on neutrals a degree of inconvenience unreasonable, considering all the circumstances of the case.

It is true that in the *Zamora* the validity of a retaliatory Order in Council was not directly in question, but those passages were carefully considered and advisedly introduced as cogent illustrations of the principle, which was the matter then in hand. Without ascribing to them the binding force of a prior decision on the same point, their Lordships must attach to them the greatest weight and, before thinking it right to depart from them, or even necessary to criticize them to any great length, they would at least expect it to be shown either that there are authoritative decisions to the contrary, or that they conflict with general principles of Prize Law or with the rules of common right in international affairs.

What is here in question is not the right of the belligerent to retaliate upon his enemy the same measure as has been meted out to him, or the propriety of justifying in one belligerent some departure from the regular rules of war on the ground of necessity arising from prior departures on the part of the other, but it is the claim of neutrals to be saved harmless under such circumstances from inconvenience or damage thereout arising. If the statement above quoted from the *Zamora* be correct, the recitals in the Order in

Council sufficiently establish the existence of such breaches of law on the part of the German Government as justify retaliatory measures on the part of his Majesty, and, if so, the only question open to the neutral claimant for the purpose of invalidating the order is whether or not it subjects neutrals to more inconvenience or prejudice than is reasonably necessary under the circumstances.

Their Lordships think that such a rule is sound, and, indeed, inevitable. From the nature of the case the party who knows best whether or not there has been misconduct calling such a principle into operation, is a party who is not before the court, namely, the enemy himself. The neutral claimant can hardly have much information about it, and certainly cannot be expected to prove or disprove it. His Majesty's Government, also well aware of the facts, has already by the fact as well as by the recitals of the Order in Council solemnly declared the substance and effect of that knowledge, and an independent inquiry into the course of contemporary events, both naval and military, is one which a Court of Prize is but ill-qualified to undertake for itself.

Still less would it be proper for such a Court to inquire into the reasons of policy, military or other, which have been the cause and are to be the justification for resorting to retaliation for that misconduct. Its function is, in protection of the rights of neutrals, to weigh on a proper occasion the measures of retaliation which have been adopted in fact, and to inquire whether they are in their nature or extent other than commensurate with the prior wrong done, and whether they inflict on neutrals, when they are looked at as a whole, inconvenience greater than is reasonable under all the circumstances. It follows that a Court of Prize, while bound to ascertain, from the terms of the order itself, the origin and the occasion of the retaliatory measures for the purpose of weighing those measures with justice as they affect neutrals, nevertheless ought not to question, still less dispute, that the warrant for passing the order, which is set out in its recitals, has in truth arisen in the manner therein stated.

Although the scope of this inquiry is thus limited in law, in fact their Lordships cannot be blind to what is notorious to all the world and is in the recollection of all men, the outrage, namely, committed by the enemy upon law, humanity and the rights alike of belligerents and neutrals, which led to, and, indeed, compelled the adoption of some such policy as is embodied in this Order in Council. In con-

sidering whether more inconvenience is inflicted upon neutrals than the circumstances involve, the frequency and the enormity of the original wrongs are alike material, for the more gross and universal those wrongs are, the more are all nations concerned in their repression, and bound for their part to submit to such sacrifices as that repression involves.

It is right to recall that, as neutral commerce suffered and was doomed to suffer gross prejudice from the illegal policy proclaimed and acted on by the German Government, so it profited by and obtained relief from retaliatory measures if effective to restrain, to punish and to bring to an end such injurious conduct. Neutrals, whose principles or policy lead them to refrain from punitory repressive action of their own, may well be called on to bear a passive part in the necessary suppression of courses which are fatal to the freedom of all who use the seas.

The argument principally urged at the Bar ignored these considerations and assumed an absolute right in neutral trade to proceed without interference or restriction, unless by the application of the rules heretofore established as to contraband traffic, unneutral service, and blockade. The assumption was that a neutral, too pacific or too impotent to resent the aggressions and lawlessness of one belligerent, can require the other to refrain from his most effective or his only defence against it, by the assertion of an absolute inviolability for his own neutral trade, which would thereby become engaged in a passive complicity with the original offender.

For this contention no authority at all was forthcoming. Reference was made to the Orders in Council of 1806 to 1812, which were framed by way of retaliation for the Berlin and Milan decrees. There has been much discussion of these celebrated instruments on one side or the other, though singularly little in decided cases or in treaties of repute, and, according to their nationality or their partisanship, writers have denounced the one policy or the other, or have asserted their own superiority by an impartial censure of both. The present order, however, does not involve for its justification a defence of the very terms of those Orders in Council. It must be judged on its merits, and, if the principle is advanced against it that such retaliation is wrong in kind, no foundation in authority has been found on which to rest it.

Nor is the principle itself sound. The seas are the highway of

all, and it is incidental to the very nature of maritime war that neutrals, in using that highway, may suffer inconvenience from the exercise of their concurrent rights by those who have to wage war upon it. Of this fundamental fact the right of blockade is only an example. It is true that contraband, blockade, and unneutral service are branches of International Law which have their own history, their own illustrations, and their own development. Their growth has been unsystematic, and the assertion of right under these different heads has not been closely connected or simultaneous. Nevertheless, it would be illogical to regard them as being in themselves disconnected topics, or as being the subject of rights and liabilities which have no common connection. They may also be treated, as in fact they are, as illustrations of the broad rule that belligerency and neutrality are states so related to one another that the latter must accept some abatement of the full benefits of peace in order that the former may not be thwarted in war in the assertion and defence of what is the most precious of all the right of nations, the right to security and independence. The categories of such cases are not closed. To deny to the belligerent, under the head of retaliation, any right to interfere with the trade of neutrals beyond that which, quite apart from circumstances which warrant retaliation, he enjoys already under the head of contraband, blockade and unneutral service, would be to take away with one hand that which has formally been conceded by the other. As between belligerents acts of retaliation are either the return of blow for blow in the course of combat, or are the questions of the laws of war not immediately falling under the cognizance of a Court of Prize. Little of this subject is left to Prize Law beyond its effect on neutrals, and on the rights of belligerents against neutrals, and to say that retaliation is invalid as against neutrals, except within the old limits of blockade, contraband and unneutral service, is to reduce retaliation to a mere simulacrum, the title of an admitted right without practical application or effect.

Apart from the *Zamora*, the decided cases on this subject, if not many, are at least not ambiguous. Of the *Leonora* (1918, p. 182), decided on the later Order in Council, their Lordships say nothing now, since they are informed that it is under appeal to their Lordships' Board, and they desire on the present occasion to say no more, which might affect the determination of that case, than is indispensable to the disposal of the present one.

Sir William Scott's decisions on the retaliatory Orders in Council

were many, and many of them were affirmed on appeal. He repeatedly and in reasoned terms declared the nature of the right of retaliation and its entire consistency with the principles of International Law. Since then discussion has turned on the measures by which effect was then given to that right, not on the foundation of the principle itself, and their Lordships regard it as being now too firmly established to be open to doubt.

Turning to the question which was little argued, if at all, though it is the real question in the case, whether the Order in Council of March 11, 1915, inflicts hardship excessive either in kind or in degree upon neutral commerce, their Lordships think that no such hardship was shown. It might well be said that neutral commerce under this order is treated with all practicable tenderness, but it is enough to negative the contention that there is avoidable hardship. Of the later Order in Council they say nothing now. If the neutral shipowner is paid a proper price for the service rendered by his ship, and the neutral cargo-owner a proper price according to the value of his goods, substantial cause of complaint can only arise if considerations are put forward which go beyond the ordinary motives of commerce and partake of a political character, from a desire either to embarrass the one belligerent or to support the other.

In the present case the agreement of the parties as to the amount to be allowed for freight disposes of all question as to the claimant's rights to compensation for mere inconvenience caused by enforcing the Order in Council. Presumably, that sum took into account the actual course and duration of the voyage, and constituted a proper recompense alike for carrying and for discharging the cargo under the actual circumstances of that service. The further claims are in the nature of claims for damages for unlawful interference with the performance of the Rotterdam charter-party. They can be maintained only by supposing that a wrong was done to the claimants, because they were prevented from performing it, for in their nature these claims assume that the shipowners are to be put in the same position as if they had completed the voyage under that contract, and are not merely to be remunerated on proper terms for the performance of the voyage, which was in fact accomplished. In other words, they are a claim for damages, as for wrong done by the mere fact of putting in force the Order in Council. Such a claim cannot be sustained. Their Lordships will humbly advise his Majesty that the appeal should be dismissed, with costs.

The Commonwealth at War. By A. F. Pollard. London: Longmans, Green & Co. 1917. pp. vi, 256. $2.25 net.

It is not often that brilliancy goes hand in hand with learning and wisdom so continuously as it does along the pages of this volume. The book consists of a collection of essays, lectures, and newspaper articles by the Professor of History in the University of London, delivered or printed from time to time during the past four years. They are arranged for the most part in chronological order, and one gets the impression as to most if not all of them that they were evoked by the more or less critical conditions of public feeling and opinion that presented themselves from time to time during the course of the war. They have for this reason a vividness and vitality that are not too frequently characteristic of the work of profound and scholarly historians. It would not be possible for Professor Pollard to write anything that would be uninteresting, but the special interest of this volume is that, because of the circumstance referred to, it enables one to gain a particularly vivid conception of the realized as well as the frustrated hopes, the groundless as well as the justifiable fears, the true as well as the false judgments, amid which the people of England struggled through to the final victory for which they endured hardness as good soldiers for so many long and weary years.

The table of contents is certainly alluring, with its array of no less than nineteen titles. The author begins with a clear and powerful presentment of the causes of the war, laying particular emphasis upon the moral issues at stake. His second essay is a humorous but not the less philosophical treatment of the sometimes diverting and sometimes distracting rumors spread abroad in the earlier stages of the war, one of which will instantly be recalled, of the legendary Russian forces that embarked at Archangel and reached the western front by way of Leith and Southampton. Another, not so well-known, may be said to have deceived the very elect, as it appeared "not in a half-penny newspaper, but set out in the dignity and circumstance" of the *Fortnightly Review,* "over a familiar but pseudonymous signature."

Space does not permit any detailed reference to these attractive titles, but there is one essay that is particularly timely, in which the author discusses "the growth of an Imperial Parliament." This admirable chapter is the Creighton Lecture, delivered before the University of London in October, 1916. The doctrine of the essay, if it is permissible to use so formidable a term—the idea that is expanded and illustrated by the lecturer, is closely connected with the conviction which led him to choose as a title for his volume, "The Commonwealth at War," rather than "The Empire at War." In one of the following chapters the writer recalls the well-known jest of Voltaire that the Holy Roman Empire was so-called because it was neither holy nor Roman nor an empire, which he makes good use of as his introduction to a reminder that "the British Empire is only an empire in a sense which makes nonsense of the word; for it is like no other empire that ever existed, and it would certainly smell as sweet if called by any other name." The substance of this Creighton lecture, then, is a convincing historical argument against the school of Colonial and perhaps the smaller one of Imperial thinkers and publicists who are anxious to bring about some more definite constitutional relations than those which now exist between the mother-country and the so-called colonies of the empire. Without condemning entirely the desire evinced by this class of political thinkers for some conscious and deliberate effort in the promotion of Imperial unity, he administers a very timely and useful lesson to them by explaining the bearing of the antithesis between growth and manufacture upon the past and future of British parliamentary institutions. "If our forefathers consciously created first an English and then a British parliament to meet the needs of these islands, then," says the writer, "we may hope by conscious effort to create a new Imperial parliament to satisfy the wider claims of a British empire. If, on the other hand, Parliament as it exists to-day was never designed or created by any conscious volition, then the argument in favor of the possibility of a new and special creation loses some of its force."

His illustrations of the development of British institutions by growth rather than by manufacture are most striking, and some of them must prove surprising to all but the best-instructed of historical scholars. It is no new discovery that Alfred the Great was not the inventor of trial by jury; that it was not an Anglo-Saxon institution at all, nor a popular institution designed to protect the liberty of the

subject, but a royal expedient, introduced from abroad in the interests of the treasury. Possibly it is not so well-known that Henry II developed our judicial system, not for the sake of justice, but for the rewards or fines which justice brought into the royal exchequer, the incidental development of the beginnings of a system of common law being merely a by-product of his judicial establishment. "None of the great elements of the British constitution was deliberately made." "The history of Parliament is a record of human action in which human design has played an almost insignificant part." "No one designed either the House of Lords or the House of Commons." The British Cabinet, as everybody knows, for Macaulay told us that many years ago, is an institution wholly unauthorized by any written statute or resolution or record or any writing of any kind whatsoever. "The premiership was regarded as an obnoxious importation from France. George Grenville declared it an odious title, and Lord North forbade its use in his household."

Coming to closer quarters with the problem of Imperial consolidation, the lecturer points out among other things how well the British Empire got along when the ties between the homeland and the British colonies were similar to the present relations between Britain and Canada, how tragically it fell to pieces when Grenville and Townshend insisted on regularizing the relations between the mother and the daughter and "reducing to logical form the heterogeneous substance" of the commonwealth. Before Grenville's financial pedantry set the colonies and the motherland by the ears the New Englanders were the mainstay of the Imperial fabric on this side of the Atlantic. Nicholson, with his fleet and his New England troops, had captured Port Royal in 1710 and changed its name to Annapolis, in honor of the reigning sovereign. Governor Shirley, of Massachusetts, had sent out Sir William Pepperel to take Louisbourg from the French in 1745. If well enough had been let alone and the "salutary neglect" of the colonies had only been permitted to continue there would not have been the hundred and more years of alienation which required the agony of a world-wide war in order to completely cure it. Surely, in the light of such a lesson, and with the experience of the splendid results achieved in the European war under the loose and voluntary system or want of system which is at present enjoyed throughout the British Commonwealth the burden is upon those who call for any radical operation in the way of regularizing the relations between

its various constituents. Professor Pollard looks to the Privy Council as an agency through which may possibly be brought about the wider, all-embracing parliament of the whole united commonwealth. His discussion of this possibility is unconvincing. More to the purpose, and as eloquent as it is convincing, is the closing paragraph of this splendid lecture—"Essential unity has come in bountiful measure to British realms in this war, not because they sought that unity for itself but because they found it in the pursuit of a common ideal, in the defence of a common principle; formal unity may come in the course of time, but not because we strive to create it. It will grow as the outward sign of an inward grace, achieved through a communion of service and self-sacrifice for the Commonwealth of nations and the common weal of man."

B. RUSSELL.

Reports to the Hague Conferences of 1899 and 1907. Publication of the Carnegie Endowment for International Peace, Division of International Law. Edited, with an introduction, by James Brown Scott, Director. Oxford: At the Clarendon Press. 1917. pp. xxxii, 940.

When the Third Hague Peace Conference convenes it will be confronted with a task of reconstruction. Of the conventions concluded by the earlier Conferences of 1899 and 1907, the agreements concerning belligerent rights and duties have proven ineffectual since August, 1914, partly because of a Teutonic determination to brook no interference with strategic aims or military achievement, and partly also because the conventions were the product of an endeavor to secure harmony of action at the expense of principle.

It has become, therefore, necessary to examine afresh, in the light of the European War, what was proposed as well as what was agreed upon in 1899 and 1907. The publication of the Reports to the Hague Conferences issued by the Carnegie Endowment and edited by Dr. Scott serves to bring home the task of examination and criticism to American students generally.

The volume embraces an English translation of the "official explanatory and interpretative commentary accompanying the draft conventions and declarations submitted to the conferences by the several commissions charged with preparing them, together with the texts

of the final acts, conventions and declarations as signed, and of the principal proposals offered by the delegations of the various powers as well as of other documents laid before the commissions."

The reports may serve to attract attention in the United States to the efforts of certain powers in 1907 to minimize restrictions tending to interfere with belligerent claims. Formal manifestations of intolerance were at times concealed, however, under the cloak of professions of a determination to respect the dictates of humanity. The remarks of Baron Marschall von Bieberstein, of the German delegation, on the codification of rules concerning mines may be cited:

> That a belligerent who lays mines assumes a very heavy responsibility toward neutrals and toward peaceful shipping is a point on which we all agree. No one will resort to this instrument of warfare unless for military reasons of an absolutely urgent character. But military acts are not solely governed by stipulations of international law. There are other facts. Conscience, good sense, and the sense of duty imposed by principles of humanity will be the surest guides for the conduct of sailors and will constitute the most effective guarantee against abuses. The officers of the German navy, I loudly proclaim it, will always fulfil, in the strictest fashion, the duties which emanate from the unwritten law of humanity and civilization (p. 692).

In his extended preface the editor has called attention to the instructions given by Secretary Root to the American delegation in 1907, who declared that "among the most valuable services rendered to civilization by the Second Conference will be found the progress made in matters upon which the delegates reach no definite agreement." Events have proven the truth of this assertion. The reports to that Conference, in so far as they illustrate the influence of national policies upon the formulation of desired codes of law, remain of utmost value and are to be reckoned with in any future attempt to effect codification.

Dr. Scott has commented adversely on the situation which permitted the President of the Second Conference, Mr. Nelidow, the first Russian delegate, to regulate its procedure and to propose the Secretary General and certain other officers. In this connection it is said:

> The president of a continental assembly believes it to be his duty to run the congress, and he faithfully performs this part of his duty. He is as far removed as the poles from the Anglo-American conception of the chairman, who is merely the presiding officer of the meeting. These matters will no doubt be satisfactorily arranged by the preparatory committee for the Third Conference, in which it is to be hoped that there will be representatives of countries other than the friends of friends.

The chief contribution of the United States to the Second Hague Peace Conference concerned matters pertaining to the pacific settlement of international disputes; and that contribution was not in vain, even though no convention applying the principle of obligatory arbitration or setting in operation the proposed Court of Arbitral Justice was concluded. The reports issued by the Carnegie Endowment offer the means of wide and thorough examination in America of that work, and which would otherwise be necessarily confined to the small group of scholars having access to the official proceedings of the Second Conference (known as *La Deuxième Conférence Internationale de la Paix, Actes et Documents*). The reports also inspire hope of a more popular interest and concern in what should be the policy of the United States respecting the modification and formulation of the laws of war on land and sea than would otherwise be possible. It is a difficult task to create in any country an enlightened and therefore sound opinion on technical problems of international law, and one really useful to the government burdened with the formulation of a constructive policy. In the United States this difficulty has been serious. The reports to the Hague Conferences offer aid in its solution; for there is now placed within the reach of the American public a simple and direct means of comparing the theories advocated from day to day in various quarters, with the discussions of statesmen reflecting every shade of opinion within less than seven years of the outbreak of the European War. By this accomplishment the Carnegie Endowment and its editor have rendered a distinctly useful service, to which the reviewer acknowledges his own indebtedness.

Tables of signatures, ratifications, adhesions and reservations to the conventions and declarations of the Conferences of 1899 and 1907, are given. An index of persons as well as a general index are appended. The translations of the reports and annexes thereof are the work of Messrs. W. Clayton Carpenter, Henry G. Crocker and George D. Gregory.

CHARLES CHENEY HYDE.

From Isolation to Leadership: A Review of American Foreign Policy. By John Holladay Latané, Ph.D., LL.D. New York: Doubleday, Page & Company. 1918. pp. viii, 215. $1.00.

The central thread of the ten chapters of this small timely volume is the question of participation in world politics—either in protection of American rights and principles or by cooperation in affairs of general interest.

Although the volume evidently is largely a growth from earlier studies in diplomatic relations and from preparation of addresses delivered at various universities or before political and international associations, its present appearance was doubtless influenced by the President's bold announcement of January 22, 1917, proposing that the nations should adopt the Monroe Doctrine as the doctrine of the world and disentangle themselves from secret alliances by the establishment of a concert of powers through a League to Enforce Peace, and also by the astonishing achievement of America in organizing and transporting fighting forces which turned the tide of battle against the vast and long-prepared military organization of the Central Powers led by the military masters of Germany.

It is not a presentation of new materials, but a clear and well-articulated statement, a progressive and judicial summary and interpretation, of a large mass of facts which the author has digested and assimilated. Seizing main points, the author presents them in continuity of development, avoiding tiresome details, and without footnote references or bibliographic appendix. He adds a convenient index.

Necessarily, as planned, the book omits many incidents which one might expect or wish to find mentioned. It contains no reference to the early applications of American policy against the Barbary pirates, or in connection with the acquisition of Louisiana and Florida, or in the early American relations in the Caribbean and the contiguous territory of Central America and Mexico, or in the opening of relations in China and the Hawaiian Islands.

The writer is accurate in his historical statements, but he has introduced several historical hypotheses (pp. 33, 53, 87, 93-94, 186) which he admits are of little practical value (p. 11).

The book will prove satisfactory and useful to the student of inter-

national questions, and is especially adapted to the use of the general reader who does not have the time for a fuller treatise.

Dr. Latané briefly sketches the essential features in the development of the two chief phases of American foreign policy—the traditional policy of political isolation and the Monroe Doctrine, between which he makes a clear distinction which many writers have not made.

Dr. Latané too strongly emphasizes the idea that American maintenance of the doctrine without resort to force has really rested only on the existence of a nicely adjusted European balance of power resulting in the rise of diverting European situations at critical times when the doctrine was threatened by some European power which might have put it to the test of actual war (p. 146).

Referring to American participation at the Algeciras conference as the "most radical departure" from the American traditional policy of isolation, nevertheless, in view of what has since happened, he justifies the secret diplomacy and motives of Roosevelt as a positive factor in preserving the balance of power in Europe and thwarting the relentless attempt of the German Kaiser to humiliate France (p. 76).

He indicates that American diplomacy in the Orient has had a freer hand, illustrated by Perry's Japan expedition, which he regards as a radical departure from the general American isolation policy, and later by the retention of the Philippines not only as a naval base but also to prevent the precipitation of a world war by German seizure of the islands (p. 85).

In a brief review of Anglo-American relations, he suggests the possibility of a closer Anglo-American understanding and cooperation.

The author devotes a chapter to the natural and inevitable imperialistic tendencies appearing in protectorates and receiverships and financial supervision in the Caribbean since 1898, which converted American policy into law (p. 146) and caused Latin American attacks on the Monroe Doctrine on the ground that it has thus been violated. These so-called imperialistic policies, if administered in an unselfish spirit, the author declares are not inconsistent with the recent general war aims defined by Wilson (p. 165).

The traditional policy of isolation from world politics, justified in the early experimental days of American democracy as a quarantine against the fatal disease of militarism, long remained a mere tradition or popular delusion which restricted America in the face of opportunities for useful service, and bred a complacence of effortless contem-

plation which made her indifferent to international responsibilities and as selfish as the predatory powers from which it held her aloof. But, under new conditions resulting in closer neighborhood, and in the complexity of diplomacy resulting from the emergence of Japan as a first class world power, it finally became an impossibility and was dispelled and abandoned under the conditions of the unequal world conflict between aggressive, merciless might and defensive right. The final decision against it, as Dr. Latané observes, was doubtless influenced not only by the immediate German violation of American rights on the seas and German conspiracies and activities within American territory, but also by the well-grounded apprehension of eventual German direct attack upon the United States and by the apparent necessity of the establishment of the peace of the world and the freedom of peoples against an irresponsible military autocracy (p. 186). In making the decision, the President "assumed an unparallelled moral leadership" by clearly formulating the issue to maintain democracy and the principle of the consent of the governed, positively and throughout the world, against the attacks of autocracy. At the peace conference, the author declares, America by her unselfish aims and with her cloistered virtue gone "will be in a position to shape the destinies of the world" (p. 208).

Dr. Latané has performed a useful service by placing in convenient form this interesting narrative of the evolution of the fundamental principles and complicated questions of foreign policy, which should facilitate the study of the subject and furnish to Americans an opportunity to obtain a wider knowledge of reliable facts—a knowledge which is required to reduce the necessity of secret diplomacy in a democracy. His volume deserves to be widely read.

J. M. CALLAHAN.

A World Court in the Light of the United States Supreme Court. By Thomas Willing Balch. Philadelphia: Allen, Lane & Scott. 1918. pp. 165.

In this interesting volume the author has given us not only an instructive review of the part the Supreme Court of the United States has played in settling serious disputes and preventing wars among the States of this Union, but has also presented a thoughtful and lucid

analysis of the true and the false analogies that may be drawn between the successful operation of that great court and the doubtful success of a world court organized to perform the same beneficent function as between the independent nations.

So far as mere legal or juridical questions are concerned he entertains no doubt that a world court would be competent to adjudicate them, and that there is little future danger of great wars resulting from such causes. "Legal" questions he defines as those which do not involve profound policies of self-preservation or the "vital interests" of a nation.

But he argues forcefully that the mere establishment of such a court would not suffice to prevent wars between nations arising from "political" disputes involving vital questions of their self-preservation or welfare. In these respects his hopes for future peace are based on the slow and gradual elimination of these causes of war through international legislation or mutual agreements of the nations, through an increasing popular hatred of war, and through increased powers of conciliation as well as of legislation conferred upon the International Conference at The Hague.

If, however, a world court cannot be expected to attain greater results in the security of permanent peace than the rather moderate ones above mentioned, why, it may be reasonably asked, has our Supreme Court succeeded so admirably in the peaceable settlement of the numerous disputes that have in the course of more than a century arisen between the sovereign states composing the United States?

Our author attributes this to two principal causes or influences. He is emphatic in his postulate that it is due, in the first place, to the pressure of the outside world reacting upon the States of the Union, which has forced them from motives of self-preservation and dread of attack to stand together and exert their united force to compel two disputant states to keep the peace and to accept judicial determinations of their disputes. On the other hand, in case of a court established by the united assent of all nations to secure general peace, there is no force *outside of the world* to drive the peoples of the earth to remain united in order to avoid war among themselves. But, to quote the author: "It should not be forgotten that there is *within* the Nations of the world themselves a force driving toward peace. This force arises from the fact that the destruction of life and wealth wrought by modern war as well as the destruction of wealth caused by the prepar-

ation in times of peace for war is so tremendous that immense suffering both immediate and for the future are thereby inflicted upon the inhabitants of the belligerent Nations, and indirectly in many cases upon neutrals."

May it not be hoped that this subjective force, greatly enhanced by the present war, will ultimately prove as powerful as the dread of attack from without?

The second reason assigned for the difference in effectiveness between our Supreme Court and the contemplated international tribunal is that in our case the vital interests of our States are protected already otherwise than by the action of the court, while those of the Nations must depend upon the adjudications of the world court or else upon the strong arms of the Nations themselves, the latter being their main reliance.

If we ask why this difference in favor of our Supreme Court, the author replies:

"Because when two States of the Union appear at its bar as litigants upon a question which is purely a bone of contention between them, not only is the power of all the United States, *owing in part to the pressure of the outside world* [italics his], behind the court to enforce its judgment, but also the future safety and existence of neither state is really endangered by the decision. The individual States of the Union are not exposed to be divided up and annexed in parcels or *in toto* to some of the other States, as is the case with members of the family of Nations.

"This immunity from dismemberment and absorption of one member state by another . . . is due in part to the need of all the forty-eight States . . . to remain united and live in peace together in order to afford a united and strong front for mutual protection against the other nations of the world . . . and in part also to the fact that within all the bounds of the United States there is entire freedom of trade and migration, while between the members of the family of nations there is restriction of trade and some restriction of migration."

If this be a complete analysis of the reasons for the difference, then the nations of the world, if they would have peace, must address themselves to the task of securing freedom of trade and migration amongst themselves and of finding a substitute for the need of "a united and strong front for mutual protection against other nations of the

world;'' and when we remember that in an association of all the nations to secure permanent peace among themselves the only guarantee of it would be found in the maintenance of the association and the ready and prompt performance by each member Nation of its obligations, and recall the growing hatred of war alluded to by the author, it might be possible to place the world court on the same plane as our own Supreme Court.

But is it quite just to say that the only reasons why our States have no ''vital interests'' to protect against each other are those above mentioned? These certainly have their weight, but so also have those other provisions of our Constitution which declare that no State shall acquire the territory of another without the consent of the States concerned as well as of the Congress; that no State shall mistreat the citizens of another, but that the citizens of each shall have all the rights, privileges and immunities of citizens in the several States; that no State shall enter into alliances or confederations, or make any compact or agreement with another without the consent of Congress; that no State shall keep troops (save militia) or ships of war or declare war save when invaded; and—by no means least—that trade and commerce between the States and with foreign countries shall not only be free from restrictions laid by the States individually but shall be controlled by them all jointly through the Congress and through the treaty-making power.

Do not these constitutional provisions, taken together, lift our States individually out of the murky atmosphere of ''political'' disputes and elevate them to the purer and rarer atmosphere of the ''legal'' dispute, always capable of settlement by judicial decision? Are they not thereby deprived of the power and opportunity of exercising ''political'' powers, the prolific breeders of ''political'' disputes involving the ''vital interests'' which cannot be adjudicated?

The attainment of this desirable consummation by our States involved the total surrender or the grant to all the States united of some sovereign rights by each of the States, but only of those which were susceptible of being used to the detriment of their sister States in the Union; and while, as the author points out, since the adoption of the Constitution these surrenders or grants of powers have been more and more extended in consequence of the war of 1861 and of amendments and departmental interpretations of the Constitution, the fact remains that, even under that instrument as originally adopted, the States in-

dividually (though not in groups, as the events of 1861 attest) had very effectually preserved themselves and each other from interstate wars.

The thirteen original States were almost as proud of and devoted to their sovereignty and independence as is the proudest state in Europe, and yet they entered into a league which, through the surrender of certain war-breeding powers, enabled them not only to unite against outside foes but to prevent in the main internecine wars among themselves. May we not hope, despite the author's doubts, that the nations possess enough of constructive imagination to lift them to like heights of statecraft!

RALEIGH C. MINOR.

German Imperialism and International Law. By Jacques Marquis de Dampierre. New York: Charles Scribner's Sons. 1917. pp. viii, 277.

Copious quotations from the books of many of Germany's own writers, and from the archives of the French Government, constitute the source and basis of the indictment drawn in this book against the German imperialistic method of conducting war. The restrained and serious style in which the indictment is drawn gives their true value to the facts which are recorded. There can be no doubt as to the verdict of *guilty* which any fair-minded jury would be obliged to bring in against the accused.

About one-half of the book is devoted to the all too familiar and revolting story of the excesses committed by the German armies alike in victory and defeat. It proves, convincingly and abundantly, that the ancient military maxims, "to the victors belong the spoils" and "woe to the vanquished," have been acted upon by the German soldiers in this war with a scientific efficiency and universality unrivalled in any previous one within civilized times. In this respect, as in many others, "all precedents have been broken."

The chief interest and value of the book lies, however, in the author's attempt to explain the spoliation and terror caused by Germany's armies by referring them to Germany's imperialistic philosophy. In the course of his narrative there crop out every little while other causes or pretexts which will doubtless be exploited in detail by

Germany's future apologists. Among these may be mentioned, first, the *argumentum ad hominem,* especially with reference to Great Britain's methods in warfare. Maximilian Harden, for example, quotes with approval the dictum of Cecil Rhodes in regard to the Boer War: "This war is just because it serves my nation, because it increases the power of my country." Tannenberg, again, justifies Germany's treatment of private property on land by declaring that "Great Britain regards it as her special right to recognize no private property in maritime war. As an equally Germanic power, let us accept her point of view, and transport it into the domain which belongs to us—continental war." This *tu quoque* argument is applied, also, to Germany's continental neighbors who are accused of having treated German territories, during the Thirty Years and the Napoleonic wars, "as if they were goods without an owner."

Again, the glamor with which poets intoxicated by one thing or another have gilded, in the literature of every people, the "Berserker rage" displayed in primitive battles, is claimed by Germany's apologists for the *furor teutonicus* which has been so much in evidence during the present war.

The belief, cherished by Germany's masses and the mass of Germany's soldiers, that the true "Belgian atrocities" were those treacherously committed by a ferocious civilian populace upon German troops disposed to observe the laws of civilized warfare, is also made much of by the counsel for the defense.

But our author evidently considers these outcroppings as prevarications, exaggerations, or irrelevancies, and devotes the first half of his book to his thesis that violence is a vital element in Germany's political conceptions and that German imperialism is necessarily at war with international law. He admits that "the recruiting of modern armies from the whole mass of the nation always involves the risk of introducing into the army degenerates and feebleminded individuals, slaves of impulse, who, under the exceptional circumstances of the conflict, may be momentarily transformed into criminals." He accordingly refrains from indicting the whole German army for crimes committed by portions of it, as he would refuse to indict the whole German people or any people for scandalous crimes committed among them in time of peace.

On the other hand, he does fix responsibility, for the brutal attacks on property and persons, directly upon the military authorities who

ordered them, expressly approved them, or failed to punish them; and indirectly, but fundamentally, upon the militaristic imperialism which sent forth officers and men upon its mission. Such attacks, he contends, "far from constituting criminal exceptions, infractions (individual and collective) of the established discipline, are imputable to that discipline itself, and consequently to the system of government, to the whole social and moral creed, of which that discipline is the expression, the consequence, and the support."

The ultra-Teutonic conceptions of aggressive war as a capitalistic enterprise, a political duty, a biological necessity, etc., have become familiar to all the world in recent years, and the author of this book attempts, not so much to restate them, as to point out the proofs which German intellectuals have fabricated for them, and to illustrate their concrete results when embodied in actual war.

The moral of this, as of all other versions of the sordid story, is obviously that men must get rid of the whole *system* of war, for any nation is liable to pervert even its most chivalrous ideals to base and brutal uses; and, as the best means of achieving this great task, that they must replace autocracy by democracy, and nationalistic imperialism by international organization and cooperation.

WM. I. HULL.

European Treaties Bearing on the History of the United States and its Dependencies to 1648. Edited by Frances Gardiner Davenport. Washington: The Carnegie Institution. 1917. pp. vi, 387.

As defined by the editor, the purpose of the volume is to furnish "all treaties, or parts of treaties, that bear upon the history of the present territory of the United States, or of its outlying possessions. Some drafts of treaties, and the papal bulls which formed a basis for the claims of Portugal or Spain to the aforesaid territory, are also included." Four documents in this collection are now printed for the first time, and all others have been more carefully collated with the originals or authentic texts than in previous editions. A brief general introduction describes the character and inter-relation of the documents as a whole, while a more detailed introduction prefixed to each document adequately sets forth its individual background and bearing. A bibliography accompanies each document; and the documents themselves are printed in the original languages, with translations and ex-

haustive notes. Nearly two hundred pages, more than half the volume, are taken up with the relations of Portugal and Spain (and the Papacy) before the entrance of a third power. The relations of these two and of France, England, the Netherlands, and Denmark fill the rest of the book.

The first half of the volume, as the direct background of American diplomatic history, is much more valuable than the second, which, in general, possesses rather minute importance for American history, and is more or less incidental to the larger diplomacy of Europe. The Department of Historical Research plans to continue the work thus begun, and a volume including similar materials from 1648 to 1713 is in preparation. An inconsistency is noted between pages 1 and 27 in ascribing to both Nicholas V and Calixtus III the authorship of document 2.

EUGENE C. BARKER.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

[For table of abbreviations, see p. 102.]

Africa. Central (A) African Confederation. By Africanus. *Journal of the African Society, 17*: 276. July.

———. International (The) factor in the African settlement. Noel Buxton. *Contemporary R., 114*: 513.

Agents. Agents et archives diplomatiques. La legation de Russie à Berne et ses archives. O. Nippold. *Clunet, 45*: 1134.

———. Immunité diplomatique. *Clunet, 45*: 1183.

Aland Islands. Question (The) of the Aland Islands. Herbert Wright. *Contemporary, 114*: 407. October.

Albania. Albanian nationality. The Republic of Koritza. Constantine A. Chekrezi. *Current History, 9 (Pt. 2)*: 278. November.

Aliens. Alien rights in the United States in war time. W. C. Hunter. *Michigan Law R., 17*: 33. November.

———. Aliens, declarant's liability to military service—conflict of statute and treaties. (Ex parte *Larrucea*, 249 Fed. 981.) *Yale Law J., 28*: 83. November.

———. Aliens in British companies. D. Mackay. *Central Law J., 87*: 150.

———. Duty of aliens living in America. J. Buffington. *Washington Law R., 46*: 630.

———. Rules of court where enemy property interests are involved. *Chicago Legal News, 51*: 71.

Alsace-Lorraine. Dernière (La) Manœuvre Neutralisation de l'Alsace-Lorraine. Abbé Wetterle. *La Revue, 127*: 298.

———. German methods in Alsace-Lorraine. *Current History, 9 (Pt. 1)*: 412.

———. Rhin (Le) et notre marche d'Alsace-Lorraine. Général Dubois. *La Revue, 127*: 77.

———. Veritable (La) autonomie de l'Alsace. Charles Oulmont. *La Grande R., 22*: 641. October.

American Institute of International Law. Deuxième (La) session de l'Institut Américain de Droit International. *Clunet, 45*: 1327.

Argentine Republic. Situation (La) de la Argentina ante la diplomacia y el derecho. B. J. Perez Verdia. *R. de Derecho Historia y Letras, 61*: 194.

Armed Neutrality. United (The) States and the abortive armed neutrality of 1794. Samuel F. Bemus. *American Historical R., 24*: 26.

Austria-Hungary. Austria's ultimatum to Serbia; Serbia's reply. *Current History, 9 (Pt. 1)*: 559.

———. Austria's conception of a Jugo-Slavic State. Ivanoe Bonomi. *Review of Reviews, 58*: 549. November.

Austria-Hungary. Collapse (The) of Austria-Hungary. *Current History, 9 (Pt. 1)*: 392.

———. Peace via Austria. *Unpopular R., 10*: 223. October-December.

Belgium. Belgium's political future. Henri Davignon. *Fortnightly, 104*: 736. November.

———. Redemption (The) of Belgium. Philip Gibbs. *Current History, 9 (Pt. 1)*: 446.

Berlin, Congress of. Revision of the Berlin Act. A. B. Keith. *Journal of the African Society, 17*: 249. July.

Blockade. Blockade of Germany. H. H. L. Bellot. *International Law Notes, 3*: 59.

Brazil. Droit d'expulsion des étrangers au Bresil. A. Leal et F. Daguin. *Clunet, 45*: 1116.

Bulgaria. Bulgaria quits. Lothrop Stoddard. *Century, 97*: 237. December.

———. Bulgaria, Turkey, and the war. Sir Edwin Pears. *Contemporary, 114*: 485. November.

———. Bulgaria's surrender. *Current History, 9 (Pt. 2)*: 273. November.

Cession of Territory. Cession of territory; effect upon nationality of inhabitants. (Burgard v. Maiv, *Clunet, 44*: 193.) *Yale Law J., 27*: 597.

China. New (The) President of the Chinese Republic. E. H. Parker. *Asiatic R., 14*: 426. October.

Commerce. Commerce and Empire. Harold Cox. *Edinburgh R., 228*: 387. October.

Czecho-Slovaques. Armée étrangère alliée (tcheco-slovaque) en France. Decret du 16 décembre 1917. *Clunet, 45*: 1389.

———. Czech (The) Exodus: A Siberian epic. Captain Vladimir S. Hurban. *Current History, 9 (Pt. 1)*: 507.

———. Czecho-Slovak (The) nation. L. E. van Norman and Geo. Peet. *N. American R., 84*: 858. December.

———. Czecho-Slovak (The) Republic. Edward Benes. *Current History, 9 (Pt. 1)*: 492, 496.

———. Czechoslovaks (The) and their leader. Stephen H. Duggan. *Review of Reviews, 58*: 491. November.

———. Czech-Slovaks (The) in Russia and the British declaration. F. P. Marchant. *Asiatic R., 14*: 437. October.

Damages. Marché à livrer. Guerre.—Force majeure. Dommages—Intérêts. *Clunet, 45*: 1292.

Declaration of Rights. World (A) Declaration of Rights. Austin Harrison. *English R., 27*: 369. November.

Enemy Subjects. Condition des sujets ennemis en Italie. C. Pellizzi. *Clunet, 45*: 1082.

———. Traitement juridique des sujets ennemis au Siam. G. Padoux. *Clunet, 45*: 1071.

Europe. Mid-European (The) Union. *Current History, 9 (Pt. 1)*: 500.

European War. Appréciation allemande du traitement applique, pendant la guerre, aux biens allemands en France. K. Hirschland et Eugène Dreyfus. *Clunet, 45*: 1099.

European War. American war measures. J. A. Fairlie. *J. of Comparative Legislation, 18*: 90.

———. Armistice (L') et les militaires. Louis Madelin. *La Revue, 127*: 313.

———. End of the war: Story of Germany's surrender. *Current History, 9 (Pt. 1)*: 355.

———. Fin (La) de la guerre et les responsabilities de l'Allemagne. Fernaud Faure. *R. pol. et parl., 117*: 115.

———. Germany's failure in France and the peace pretense. George A. B. Dewar. *Nineteenth Century, 84*: 593.

———. How peace came to the battle fronts. *Current History, 9 (Pt. 1)*: 439.

———. March (The) to the Rhine. *Current History, 9 (Pt. 1)*: 373.

———. Notes that led up to the armistice. *Current History, 9 (Pt. 1)*: 368.

———. Obiter Scripta. Frederic Harrison. *Fortnightly, 104*: 481, 641. October, November.

———. Peace without amnesties. Frances Gribble. *Nineteenth Century, 84*: 600. October.

———. Preparazione (La) alla pace. Alberto Theodoli. *Nuova Antologia, 196*: 165.

———. Prince Maximilian's peace drive. Text of official notes. *Current History, 9 (Pt. 1)*: 242. November.

———. Programme (A) for peace. Revised. H. Wickham Stead. *Edinburgh R., 228*: 209. October.

———. Roots (The) of the war. Wm. S. Davis, William Anderson, and Mason W. Tyler. *Century, 97*: 201. December.

———. Surrender of the German high seas fleet. *Current History, 9 (Pt. 1)*: 382.

———. Text of armistice signed by Germany. *Current History, 9 (Pt. 1)*: 364.

———. War (The) is won. Mitteleuropa is finished. Frank H. Simonds. *Review of Reviews, 58*: 481. November.

Exterritoriality. Cessation du privilège d'exterritorialité en Chine pour les sujets ennemis. G. Padoux, *Clunet, 45*: 1088.

Flemish Movement. Flemish (The) movement and the Activist intrigue. Henri de Sagher. *New Europe, 9*: 84. November.

Foreign Corporations. Changing (The) law of foreign corporations. Th. Reed Powell. *Pol. Sci. Q., 33*: 549.

Foreign Judgments. Contestation entre étrangers. Incompétence des tribunaux francais. *Clunet, 45*: 1179.

———. Jugement étranger.—Jugement anglais. Absence de traité diplomatique sur la matière entre la France et l'Angleterre. *Clunet, 45*: 1190.

France. Reconstruction (La) de la France. La-Tour—Du-Pin Chambly. *Le Correspondant, 235*: 177. October.

———. Franco-German armistice in 1871. J. W. Duffield. *Current History, 9 (Pt. 1)*: 419.

Freedom of Seas. Freedom of the land and freedom of the seas. Th. S. Woolsey. *Yale Law J., 27*: 151.

Germany. Allemand d'Amerique. Andre Bellessort. *La Correspondant, 235*: 229. October.

———. Can Downing Street Save Germany? L. J. Maxse. *National R., 72*: 330. November.

———. Ex-German (The) colonies. L. Cope Cornford. *National R., 72*: 374. November.

———. Germany in defeat. *New Europe, 9*: 73. November.

———. Germany in Revolution: The Kaiser's abdication. *Current History, 9 (Pt. 1)*: 385.

———. Kaiser's (The) secret negotiations with the Tsar. 1904-1905. Sidney B. Fay. *American Historical R., 24*: 48. October.

———. Legal disposition of Kaiser Wilhelm. R. V. Sears. *Ohio Law Bulletin, 63*: 300.

———. New (The) Germany. *New Europe, 9*: 96. November.

———. Repentance (The) of Germany. Lord Edward Gleichen. *National R., 72*: 295. November.

Great Britain. Foreign policy and the democracy of the Empire. B. Keith. *J. of Comparative Legislation, 18*: 47.

India. Future (The) of India. Lord Lydenham of Combe and Sir Andrew Fraser. *Nineteenth Century, 84*: 762.

———. Is India a nation? J. M. Russell. *Quarterly R., 230*: 422. October.

Institut intermediaire. Fondation hollandaise d'un "Institut intermèdiare international." *Clunet, 45*: 1333.

International Law. American influence upon international law. J. I. Westergard. *J. of Comparative Legislation, 18*: 2; *American Law Review, 52*: 752.

———. Modern (The) State, internationalism and war. E. Belfort Bax. *English Review, 27*: 121. August.

———. Swiss International Law Association. *International Law Notes, 3*: 26.

Labor. Labor Questions in the Peace Settlement. Sophy Sanger. *Contemporary, 114*: 436. October.

Latin America. Our new relation in Latin America. *Unpopular R., 16*: 307. October-December.

League of Nations. Call to Service. Duty of Bench and Bar to aid in securing a league of nations to enforce the peace of the world. J. H. Clarke. *Ohio Law Bulletin, 63*: 286.

———. Concordia (La) internacional. N. Fells. *R. de Derecho Historia y Letras, 61*: 258.

———. Conditions essential to a league of nations after the war. E. Grey. *Chicago Legal News, 50*: 394.

———. De quelques notions utiles sur l'ordre juridique international. Philippe Secretan. *Bibliothèque Universelle et Revue Suisse, 92*: 238. November.

———. Earlier (An) League to Enforce Peace. *Unpopular R., 10*:244. October-December.

———. Empire (The) and the World League. E. J. Dillon. *Fortnightly, 104*: 489. October.

———. Entente des Ligues maritimes francaises et belges. *Clunet, 45*: 1338.

League of Nations. League of Nations. Division of Sovereignty. S. E. Baldwin. *International Law Notes, 3*: 57.

———. League (A) of nations. George Aitken. *English R., 27*: 167. September.

———. League (The) of Nations: A Voice from the Past. Harold Spender. *Contemporary, 114*: 407. October.

———. League (The) of nations. Prize Essay. H. N. Brailsford. *English Review, 27*: 87. August.

———. League or Entente? John Jay Chapman. *N. American R., 208*: 828. December.

———. Obstacles (The) to a League of Nations. Wm. Archer. *Fortnightly, 104*: 567. October.

———. Plan for organizing the League of Nations. Theodore Marburg. *J. of Comparative Legislation, 18*: 124.

———. Programme (Le) de la "Société des Nations" par une "Société de Droit International." *Clunet, 45*: 1332.

———. Sociedad (La) de las naciones americanas en el derecho de gentes. M. de Oliveira. *Revista de derecho Historia y Letras, 61*: 170.

———. Société (La) des nations par l'equilibre mondial. Emmanuel Bodin. *La Grande R., 22*: 668. October.

———. "Société (La) des Nations" devant les Parlements. *Clunet, 45*: 1329.

———. Suspension from the society of nations a sufficient sanction for a world-court judgment. S. E. Baldwin. *American Law R., 52*: 695. October.

Luxemburg. Luxemburg and Germany. *Current History, 9 (Pt. 2)*: 310. November.

Military Service. Alliés étrangers servant dans les armées alliées ou autonomes. *Clunet, 45*: 1482.

Napoleon. Napoleon I and Caporetto. Horatio F. Brown. *Edinburgh R., 228*: 230.

Nationality. Foundations (The) of national self-determination. *Scottish R., 41*: 285.

———. British Nationality. *Law Times, 145*: 313.

———. Cancellation of certificate of citizenship of native of Germany (U. S. v. Wursterbarth, 249 Fed. 908; U. S. v. Darmer, 249 Fed. 989). *Virginia Law Register, 4*: 375; *Yale Law J., 28*: 84.

———. Déchéance de naturalisation (Affaire Kuhn). *Clunet, 45*: 1231.

———. Déchéance de naturalisation (Affaire Lorentz). *Clunet, 45*: 1237.

———. Déchéance de naturalisation (Affaire Weil). *Clunet, 45*: 1243.

———. Déchéance de naturalisation (Affaire Schwaitz). *Clunet, 45*: 1236.

———. Déchéance de naturalisation. Legion étranger (affaire Woistenrich). *Clunet, 45*: 1226.

———. Déchéance de naturalisation. Notification. *Clunet, 45*: 1245.

———. Double nationality. *Law Times, 116*: 237.

———. Dual allegiance and section 25 of the German nationality law of July 22, 1913. G. C. F. S. Marshal. *International Law Notes, 3*: 79.

———. Enfant mineur d'un étranger naturalisé francais. *Clunet, 45*: 1217.

Nationality. "Heimathose" (Les) pendant la guerre. Edouard Clunet. *Clunet, 45*: 1067.

———. Individu né en France de parents étrangers. *Clunet, 45*: 1219.

———. Naissance en France de parents étrangers. *Clunet, 45*: 1214.

———. Nationalité allemand. Perte par séjour à l'étranger. *Clunet, 45*: 1246.

———. Nationalité—Allemand d'origine—Naturalisation étrangère—Double nationalité. (Affaire Rée.) *Clunet, 45*: 1194.

———. Nationalité—Competence du tribunal civil pour déterminer la nationalité. *Clunet, 45*: 1210.

———. Nationalité.—Convention et déclaration franco-espagnoles de 1862 et 1892. *Clunet, 45*: 1201.

———. Nationalité (La) des enfants d'agents diplomatiques et consulaires. E. Audinet. *Clunet, 45*: 1031.

———. Nationalité—Individu né à l'étranger. *Clunet, 45*: 1212.

———. Nationalité.—Option.—Fils de résortissants à une puissance ennemie. (Sujets ottomans.) *Clunet, 45*: 1224.

———. Nationalité—Option des fils d'étrangères né en France—Loi du 3 julliet 1917. *Clunet, 45*: 1203.

———. Nationalité—Parents ayant perdu la qualité de Francais. Réclamation de cette qualité par les enfants. *Clunet, 45*: 1198.

———. Nationalité—Répudiation. Perte de nationalité par service dans une armée étrangère. *Clunet, 45*: 1196.

———. Renseignements officiels concernant la nationalité, le droit d'option et le service militaire des fils d'étrangers nés en France, des fils de naturalisés Francais et de réintégrés Francais. Eugène Audinet. *Clunet, 45*: 1149.

———. Naturalization. Applicant's violation of Sunday saloon law. (U. S. vs. Gerstein, 119 N. E. 922.) *Yale Law J., 28*: 83.

———. Naturalization. Temporary naturalization for service in army refused. (In *re* naturalization of aliens in army or navy of United States. 250 Fed. 316.) *Yale Law J., 28*: 94.

Native Races. Government (The) of native races. C. L. Temple. *Quarterly R., 230*: 303. October.

Occupied Territory. Case (The) against restoration of occupied territory. By a staff officer. *English R., 27*: 184.

———. Nature des relations juridiques dérivées de l'occupation militaire ennemie. Ch. de Visscher. *Clunet, 45*: 1090.

———. Traitement infligé par l'Allemagne à la magistrature, au Barreau et à l'administration civile en pays d'occupation. P. Calame. *Clunet, 45*: 1122.

———. Usurpation par l'Allemagne du pouvoir judiciaire en pays d'occupation. M. Kufferath. *Clunet, 45*: 1132.

Peace. Coming (The) Peace Congress. Roland G. Usher. *N. American R., 208*: 817. December.

———. Necessary (A) guarantee of peace. T. McKinnon Wood. *Contemporary, 114*: 477. November.

———. President Wilson's peace program. *Current History, 9 (Pt. 2)*: 251. November.

Peace. Propositions (Les) de paix. Ernest Lémonon. *Revue politique et parlementaire, 117*: 204.

Poland. Armée étrangère alliée (polonaise) en France. Decret du 31 mai, 1918. *Clunet, 45*: 1383, 1385.

———. Poland and German peace with Ukraine from the standpoint of international law. J. C. Wittenberg. *International Law Notes, 3*: 77.

———. Poland's move for independence. *Current History, 9 (Pt. 1)*: 497.

———. Question (La) Polonaise. Wm. Martin. *Quarterly R., 230*: 474. October.

Prizes. Development of German prize law. C. H. Huberich. *Solicitor's Journal, 62*: 647, 664, 678, 699, 713.

———. Organisation en Chine d'une cour des prises maritimes depuis la guerre. G. Padoux. *Clunet, 45*: 1168.

———. Prise maritime. Baigne grec *Evangliclistria.* Pêche côtière. *Journal Officiel,* 1918:4360.

———. Prise maritime. Navire sans nom, ni numero, sans papiers de bord. *Journal Officiel,* 4358, 4359.

———. Prise maritime. Vapeur *Barcelo* (espagnol). Destination finale en pays neutre non établie. *Journal Officiel,* 1918:4358.

———. Prise maritime. Vapeur le *Tiber* (danois). Contrebande de guerre. *Journal Officiel,* 1918:4357.

———. Prise maritimes. Navires (grecs) *Athèna, Anatolia, Bogados, Scriphos, Tinoc et Eburoon.* Délai accordé aux intéressés pour reunir leur preuve. *Journal Officiel,* 1918:4360.

Prussia. Ethics of Prussian statecraft. W. Allison Phillips. *Quarterly R., 230*: 280. October.

Russia. Lenine and Trotsky German agents. *Current History, 9 (Pt. 1)*: 512; *(Pt. 2)*: 291.

Rhine. Rhine—the multinational. Margarita Yates. *East and West, 17*: 1129. October.

Roumania. Rumania and the war. N. Lupu. *Columbia University Quarterly, 20*: 312. October.

———. Terrorism versus order in Russia. *Current History, 9 (Pt. 1)*: 502.

Scheldt, The. Allemagne (L') et l'Escaut devant le droit international. Edouard Clunet. *Clunet, 45*: 1159.

Siberia. Red (The) flag in Siberia. Richard O. Atkinson. *Fortnightly, 104*: 691. November.

Slavs. Southern (The) Slav problem from the Bosnian point of view. Dusan Vasiljevie. *New Europe, 9*: 79. November.

Société genevoise de droit de legislation. Société genevoise de droit et de législation. *Clunet, 45*: 1340.

Société genevoise de paix. Société genevoise de paix. *Clunet, 45*: 1339.

Spain. Neutralité de l'Espagne. Loi du 7 juillet 1918. *Clunet, 45*: 1347.

Switzerland. The little, old republic. Neutral Switzerland's rôle in the war and the peace to come. Frederick Dorsenbach. *Review of Reviews, 58*: 509. November.

Territorial Waters. Territorial waters. Sir John W. Salmond. *Law Quarterly R., 36*: 235.

Trading with the Enemy. Boycottage (Le) des sujets allemands et des marchandises allemandes par les ligues des marins d'Angleterre, de France, etc. *Clunet, 45*: 1335.

———. Commerce avec l'ennemi. *Clunet, 45*: 1416.

———. Merchandise destined for enemy. *Law Times, 117*: 19.

———. Mesures prises en Angleterre contre les firmes allemandes. G. Schmidt et Eugène Dreyfus. *Clunet, 45*: 1111.

———. Procès (Un) en Angleterre entre firme anglaise et firme allemande. Eugène Dreyfus. *Clunet, 45*: 1165.

———. Résiliation (La) des contrats passés avec les sujets ennemis. Edouard Clunet. *Clunet, 45*: 1048.

Treaties. Can an unconstitutional law be made constitutional by a treaty? (Migratory bird law.) *Virginia Law Register, 4*: 305.

———. Convention relating to the service of citizens of the United States in Great Britain and of British subjects in the United States. *Chicago Legal News, 50*: 396.

———. Franco-Russian (The) Alliance. Text of Convention of 1892. *Current History, 9 (Pt. 2)*: 308. November.

———. Political morality and secret treaties. *Scottish R., 41*: 151.

———. Powers of the states—treaty-making power. *Yale Law Journal, 27*: 406.

———. Treaty as affecting operation of selective service law—Spanish subjects (Ex parte Sarrucea. 249 Fed. 981). *Virginia Law Register, 4*: 380.

Turkey. From Bagdad to the Mediterranean in the hands of the Turks. G. N. Gibbs. *Nineteenth Century, 84*: 660. October.

———. Our duty in Turkey. *New Europe, 9*: 90. November.

———. Turkey, Islam and Turanianism. Sir Edwin Pears. *Contemporary, 114*: 371. October.

———. Turkey's surrender to the Allies. *Current History, 9 (Pt. 1)*: 399.

United States. American (The) Embassy. T. H. S. Escott. *Contemporary, 114*: 421. October.

———. Situation (La) juridique des militaires américains en France. *Clunet, 45*: 1164.

War. Four (The) great wars. Geo. M. Trevelyan. *Edinburgh R., 228*: 265. October.

———. Guerre (La) economique. A. T. *R. de Paris, 25*: 193. September.

———. Lendemains (Les) de la guerre. Charles Stiénon. *La Correspondant, 235*: 247. October.

KATHRYN SELLERS.